



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Sexual Harassment is the Bane in a Developing Society

Aryan Raghav^a

^aDr. Ram Manohar Lohiya National Law University, Lucknow, India

Received 18 May 2022; Accepted 03 June 2022; Published 10 June 2022

“When speech or conduct is so severe and widespread that it produces a frightening or demeaning environment or circumstance that negatively impacts a person's job performance, it is referred to as hostile work environment harassment. This sort of harassment, unlike quid pro quo, can be perpetrated by anybody in the workplace, including a peer, supervisor, subordinate, vendor, customer, or contractor. Because an individual comment or event may not be severe, demeaning behaviour that is not focused on sex may occur, and there may be long periods between offensive episodes, and hostile work environment circumstances are more difficult to notice. Inappropriate touching, sexual jokes or comments, persistent requests for dates, and a work atmosphere where foul language is used are all examples of conduct that can create a hostile work environment.”

Keywords: *harassment, violation, punishment, hostile treatment, work environment.*

INTRODUCTION

Sexual harassment is a phenomenon, the study which began around the 1970s primarily in the U.S. It began to develop as a legal concept in 1977 when a feminist legal scholar Catharine MacKinnon put forth the idea that workplace harassment constituted sex discrimination, rendered illegal under the Civil Rights Act 1964. The climacteric moment for the concept came in 1991 when attorney Anita Hill testified that Clarence Thomas who was a supreme court nominee at that time had sexually harassed her during her tenure as an advisor at the Equal

Employment Opportunity Commission where he held the leadership role of chair of the commission. This incident worked as an incitement for various companies which incorporated mandatory training programs for all employees explaining what behaviour may amount to the said harassment and filing of a complaint, to maintain their reputation as safe working environments.

According to the U.S. Equal Employment Opportunity Commission, "Harassment can include sexual harassment or unwelcome sexual advances, requests for sexual favours, and other verbal or physical harassment of a sexual nature." "Harassment does not have to be sexual, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general." Also, it has to be considered that the harasser can also be of the same sex of the one harassed, either a man or woman.¹

TYPES OF SEXUAL HARASSMENT

Sexual harassment can happen in the place of work or learning environments, such as schools or universities. It can occur in multiple scenarios, including after-hours conversations, non-work-related conversations, and in non-office settings of employees or peers.² According to the Equal Employment Opportunity Commission (EEOC), there are two types of sexual harassment, namely: "quid pro quo and hostile work environment." Quid pro quo literally means "this for that." In this context, It entails direct or implicit requests for sexual favours in reciprocity for a benefit (e.g., a promotion, a salary raise) or to avoid a disadvantage (e.g., dismissal, demotion) at work. Quid pro quo harassment occurs when someone with authority or influence over another person engages in it (e.g., manager or supervisor over a subordinate). A supervisor who threatens to fire a worker if he or she does not have sex with the supervisor is clearly engaging in quid pro quo harassment.

¹ 'Sexual Harassment' (US Equal Employment Opportunity Commission) <<https://www.eeoc.gov/sexual-harassment#:~:text=It%20is%20unlawful%20to%20harass,harassment%20of%20a%20sexual%20nature.0>> accessed 06 May 2022

² 'Types of Sexual Harassment at Work: Winer, Burritt & Scott, LLP' (John Winer, 30 March 2021) <<https://www.wmlawyers.com/oakland-sexual-harassment-attorneys/types/>> accessed 04 May 2022

Hostile work environment harassment occurs when verbal communication or physical behaviour is so severe and prevalent that it produces a scary or degrading setting or condition that negatively influences a person's professional proficiency. In contrast to quid pro quo, this mode of harassment can be done by anybody in the workplace, including a peer, supervisor, subordinate, vendor, customer, or contractor. Because an individual statement or occurrence may not be severe, insulting behaviour that is not centred on sex might take place, and there might be lengthy breaks between offensive episodes, hostile work environment situations can be overlooked. Inappropriate touching, puns or statements, persistent requests for dates, and a work atmosphere where foul language is used are all incidents of conduct that embolden the creation of a hostile work environment.

To condense and control sexual harassment in the workplace, the best approach is prevention. Employers have an opportunity to cease inappropriate behaviour before it crosses the boundary of harassment by elucidation of the strict procedural action that will take place in response to complaints related to sexual harassment also, delineating the procedure for making a complaint and plan of action.

ACTS OF SEXUAL HARASSMENT INCLUDE

Sexual harassment can occur in a gamut of different environments while the harasser can be of any gender having any proximate or non-proximate relationship with the victim, i.e., supervisor, co-operator, colleague, teacher, etc

- Making terms of employment or progress contingent on sexual favours, either overtly or implicitly, are examples of sexual harassment.
- Sexual invasions are physical.
- Sexual favours are demanded.
- Sexually explicit verbal harassment
- Unwanted physical contact or touching
- Talking about sexual encounters, stories, or dreams at work, school, or in other locations where it is not appropriate.
- Being compelled to engage in sexual intercourse with someone.

- Sexual activities on one's own body.
- Sexually explicit images, emails, or text messages that you don't want.

DISTINCTION BETWEEN SEXUAL HARASSMENT AND SEXUAL ASSAULT

On Comparison, sexual harassment is a much wider term than sexual assault³ and may refer to a larger ambit of inappropriate sexual conduct. Sexual harassment more or less can include both active forms of sexual misconduct such as unwanted touching, hugging, accounting coercion, or trickery into doing such activity but, also includes nonphysical acts such as passing lewd commentaries, and vulgar jokes, or flashing vulgar material to someone.

Sexual assault, on the other hand, is specifically when you are coerced, or duped into doing some form of sexual activity i.e., groping, kissing, or penetrative sex. Sexual harassment can sometimes lead to sexual assault. For example, if your employer or co-worker forced you to kiss them or improperly touched you without your consent, this might be considered both sexual harassment and sexual assault.

LAWS DEALING WITH SEXUAL HARASSMENT IN INDIA

Sexual Harassment of women at workplace Act (Prevention, Prohibition and Redressal) Act, 2013⁴ This act can be said to be the primary legislation that is referred to by the court once a case of sexual abuse or harassment comes before the court of law. Conditioned upon the happening of the said Act in the course of employment of women which, can be an educational institution, a hospital, or a corporate office, the plaintiff can seek relief under this act.

Key points relating to the act:

- According to section 2(a)⁵, an aggrieved woman is any woman, whether employed or not, who claims to have been subjected to sexual harassment. Therefore, every woman

³ Danielle Sepulveres, 'What's the difference between sexual assault and harassment? Let's break it down' (*The Washington Post*, 21 Dec 2017) <<https://www.washingtonpost.com/news/soloish/wp/2017/12/21/whats-the-difference-between-sexual-assault-and-harassment-lets-break-it-down/>> accessed 04 May 2022

⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 2(a)

in the workplace a regular employee, an intern, or even an ad hoc worker can claim relief under the act.

- It has a provision for the setup of an Internal Complaints Committee with 10 or more employees also, to be headed by a women member which would probe the matter internally, although the violation of this provision attracts a strict fine of Rs 50000 or the cancellation of the license in the case of repetition of violence.
- The matter can be brought before the committee by a survivor, relative, friend, or any other person who has information about the occurrence and has the victim's written authorization.
- The complaint should include the location, times, dates, and, if known, the name of the accused. This information is critical about the complaint.
- The committee inquiry must be finished within 90 days, and a report must be submitted within 60 days. The deadline must be rigorously adhered to.

CRIMES UNDER THE IPC

According to NCRB (National Crime Records Bureau), in 2020, there were 28,046 incidences of rape involving 28,153 victims out of the total cases of crimes against women. Besides rape, 85,392 episodes of assault to outrage modesty and 3,741 cases of attempted rape were reported.

Laws under the Indian Penal Code (IPC 1860)⁶

- IPC Section 294⁷

It covers “obscene conduct in public places, as well as playing obscene music to disturb Laws” under the Indian Penal Code (IPC)

- IPC Section 354(A)⁸

⁶ Indian Penal Code, 1860, s 300

⁷ Indian Penal Code, 1860, s 294

⁸ Indian Penal Code, 1860, s 354A

“Demanding sexual favours, displaying pornography, and engaging in physical touching despite indications of indifference is a felony, and the convicted can face up to three years in prison, a fine, or both.”

- IPC Section 354 (B)⁹

“It deals with forcing a woman to strip, and the prison sentence runs from 3 to 7 years in prison, as well as a fine.”

- IPC Section 354 (C)¹⁰

“Voguerism is defined as seeing, capturing, or disseminating photos of women participating in intimate acts without their agreement and is prohibited under this provision. The individual faces a prison sentence of one to three years. If that man gets convicted a second time, he will face up to seven years in prison and a fine.”

- IPC Section 354 (D)¹¹

“Stalking is defined as following someone with or without their knowledge and is considered an act of sexual harassment. The penalty will be a prison sentence ranging from 3 to 5 years, as well as a fine.”

- IPC Section 499¹²

“Morphing pictures of women and disseminating them with the aim to harass and slander them is punishable by up to two years in prison, a fine, or both.”

- IPC Section 503¹³

“If a woman declines someone's sexual favours and is confronted with threats of bodily or reputational damage, she will be sentenced to two years in jail or a fine, or both.”

- IPC Section 13 509¹⁴

⁹ Indian Penal Code, 1860, s 354B

¹⁰ Indian Penal Code, 1860, s 354C

¹¹ Indian Penal Code, 1860, s 354D

¹² Indian Penal Code, 1860, s 499

¹³ Indian Penal Code, 1860, s 503

¹⁴ Indian Penal Code, 1860, ss 13, 509

“Insulting a woman's modesty by making sexually charged remarks about her in public, invading her private, is punishable by a three-year prison sentence and a fine.”

- IPC Section 67¹⁵ of the IT Act

DEALING WITH CYBER DEFAMATION

Posting any obscene or defamatory material on a public online platform to harm the reputation or harass that woman is punishable with jail time of 2 years with a fine.

*The indecent representation of Women (Prohibition) Act, 1987*¹⁶

If an individual harasses another with 'indecent representation of women' books, photographs, paintings, videos, brochures, packages, etc., they face a minimum term of two years in prison.

This Act penalizes indecent representation of women, characterized by improper depiction in any way of a woman's figure, form, or any body part such that it may have an effect of being indecent, deprecatory, or denigrating to women, or is inclined to hurt public morality. It provides against the display, publication of any advertisement, or any form of printing that includes the obscene representation of women in any manner. This law has been actively used by jurists to deal with cases relating to sexual harassment in the workplace.

*Criminal Law Amendment Act, 2013*¹⁷

It was brought forth in the aftermath of the horrendous and infamous Delhi Rape case in 2012. It is also recalled by many as the Nirbhaya Act, referring to the pseudonym given to a victim who succumbed to her injuries as a consequence of the heinous crime. It made significant amendments to the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure on laws dealing with sexual offenses.

LANDMARK JUDGEMENTS ON SEXUAL HARASSMENT

The very advent of the concept of sexual harassment can be said to have occurred around 1991, Anita Hill testified before the US congress against Clarence Thomas, a supreme court judgeship nominee, for the charges of sexual harassment, which she claimed to have faced

¹⁵ Indian Penal Code, 1860, s 67

¹⁶ Indecent Representation of Women (Prohibition) Act, 1987

¹⁷ Criminal Law (Amendment) Act, 2013

during her tenure in the post of an advisor in the Equal Employment Opportunity Commission.

*ANITA HILL v CLARENCE THOMAS*¹⁸

Facts

Hill filed a secret testimony with the Senate Judiciary Committee in 1991, stating she had been harassed by Clarence Thomas ten years before 1991, while they were both unmarried. The FBI had already examined the claims and issued an inconclusive report to the committee. The committee decided not to pursue the case any further. However, Hill's remark was leaked to the media two days before the full Senate was slated to confirm Thomas.

Judgment

After prolonged discussion, the United States Senate sanctioned Clarence Thomas to the Supreme Court by a vote of 52–48, which was also the narrowest margin to date.

JUDGMENTS BY THE SUPREME COURT OF INDIA

*Vishaka v State of Rajasthan and Ors 1997 (Bhanwari Devi Case)*¹⁹

This case can undoubtedly be considered the most prominent judgment in strictly dealing with the problem of Sexual Harassment in India. The judgment put forward an array of rules and procedures which would be used to deal with the gross issue in the future.

Facts

It was in 1992 when a lower-caste woman working as a social worker for the women's development program in the state of Rajasthan named Bhanwari Devi, particularly to abolish the sin of child marriages in her village was reportedly gang-raped by five upper-class men belonging to the Hindu community. She decided to lodge a complaint in the local police station however no investigation took place to her dismay. The problem of sexual harassment in the workplace was raised where it was to be dictated whether the employer was responsible for the sexual harassment by its employee or to its employees at the workplace.

¹⁸ *Anita Hill v Clarence Thomas*(1991)

¹⁹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241

Judgment

After taking her case to the trial court which, was subsequently dismissed with the acquittal of the accused due to the grave lacking medical evidence among other reasons, her cause and her misery came before the public eye and as her matter had been highlighted before the country, multiple women's rights organizations applied against the judgment. As a consequence of these various public interests, litigations were filed in the Hon'ble Supreme Court to dictate the widely pervading problem of sexual harassment in the workplace. Taking a course to the facts of the case, after proper investigation and referring to various international treaties the SC held such an act to be violative of women's human rights and a violation of Articles 14, 15, 19, and 21²⁰ of the Indian Constitution.

The case specified multiple guidelines which were subject to fulfillment by various public institutions and private organizations -

- It should be the employers or any other person designated by the employer, duty to provide rules and settlements to shun and keep at abeyance sexual harassment in the workplace.
- Establishment of a complaint committee at each workplace.
- The committee must be led by a woman employee and must include NGO or third-party participation.
- Half of the committee's members must be women.
- This committee will handle all complaints about sexual harassment of female employees; employers will take necessary measures in this respect in line with the applicable legislation.
- The committee would counsel and advise the victim on the next steps.

Includes a definition of sexual harassment that includes any of the following:

"Unwelcome sexually determined behavior& demands from males employees at the workplace, such as any physical contacts and advances, sexually colored remarks, showing

²⁰ Constitution of India, 1950, art.14, art.15, art.19, and art.21

pornography, passing lewd comments or gestures, sexual demands by any means, any rumors/talk at the workplace with sexually colored remarks about a working woman, or spreading rumors about a woman's sexual relationship with anybody."

*Independent Thought v Union of India and Anr.*²¹

Facts

Independent Thought is a non-governmental organization that advocates for children's rights. It launched a public interest case at India's Supreme Court. Contesting the constitutionality of exception 2 to section 375²² of the Indian Penal Code which says, "sexual intercourse or sexual action by a man with his wife, if the wife is not under the age of fifteen would not be considered rape", it raised the issues that firstly if husband and wife having sexual intercourse, while the wife is between the age of 15 and 18yrs old would constitute rape and secondly if section 375, exception 2 violated the basic rights of a female child.

Judgment

In its decision, the Supreme Court responded by criminalizing sexual intercourse that involves a minor between 15 to 18yrs of age even if the minor girl has been instigated into conjugal relations with a man. The Court ruled that exemption 2 in section 375 violates Articles 14, 15, and 21 of the Indian Constitution, which allow for invasive sexual intercourse with a girl under the age of 18 and over the age of 15 on the grounds of marriage. It further elaborated that the exception clause in Indian rape laws contradicts the aim of the Prohibition of Child Marriage Act, as well as the provisions of the Prohibition of Children from Sexual Offences Act (POSCO) in the criteria of the age of consent.

*Mukesh & Anr. v State for NCT of Delhi & Ors.*²³

It was a case capable of shaking the conscience of the collective nation and invited outrage from across the country with protests held in the National Capital. These incidents seem to

²¹ *Independent Thought v Union of India* (2017) 10 SCC 800

²² Indian Penal Code, 1860, s 375

²³ *Mukesh & Anr. v State for NCT of Delhi & Ors.*, (2013) Criminal Appeal No. 608/2017

have influenced the very severe laws which were brought forth by the government in its aftermath.

Facts

On a cold night in December 2012 in Delhi, a 23-year-old physiotherapist was violently raped and violated combined with intensive physical beating, She was assaulted with an iron rod, and her guts were torn out as a result. Despite getting all available therapies, she died in a Singapore hospital.

Judgment

Amongst the six accused, one hung himself in the prison cell jail, four were sentenced to death while a juvenile who was months away from attaining 18 years of age was sentenced to 3 years in a reformation centre. Following the incident, a panel was constituted, chaired by JS Verma (former Chief Justice of India), to review criminal legislation and provide suggestions on any potential changes that may be made to strengthen punishments in situations of extreme abuse and cruelty towards women under criminal law. Within a month, the panel had finished their report, which contained various proposals for revitalizing India's rape laws.

The Criminal Law (Amendment) Act of 2013 was promulgated in the parliament taking recourse to the Justice Verma Committee recommendations, it provides for the amendment of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872, and the Protection of Children from Sexual Offenses Act, 2012 concerning sexual offenses-related laws. The statute expanded the definition of rape and mandated capital punishment in cases where the violation leads to the victim's death or puts them in a permanent vegetative state. It also provides for new offenses to make laws more strict.

CONCLUSION

The problem of sexual harassment can be said to be born around the prevailing aura of sex discrimination, and the necessity to make amendments that were brought before the public eye in the case of Clarence Thomas. Although the post-modern Indian government seems to have brought timely legislation i.e. Indirect representation of women (prohibition) act dealing with the issue however past the horror of the Delhi rape case, statutes such as the Sexual

Harassment of women at workplace Act (Prevention, Prohibition and Redressal) Act, 2013 and Criminal law amendment act, 2013, strict procedures for prosecution and intolerance to such a sin has been depicted by the state. All women must understand different acts and types of sexual harassment so they can report them immediately and hasten the procedure for rightful prosecution.