

## **“Cyber Workplace Harassment in India – Are we in need of a better Law or Better Enforcement Mechanisms?”**

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### **INTRODUCTION**

Workplace Harassment is predominantly taking place against women in India although Men too are the victims at times but it is proportionately less, hence the law favours women who are able complainants when it comes to workplace harassment. To bring about a legislation to this effect, the Union Government of India enacted the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**. The Government said that strict compliance of the Act must be followed and reported at frequent intervals by any organisation employing more than 10 employees. This statute was enacted based on the **Vishaka Guidelines (Vishaka and Others v. State of Rajasthan)** to Prevent Sexual Harassment at Workplaces (POSH).

### **CYBER WORKPLACE HARASSMENT**

Due to the current situation of the COVID-19 Pandemic, workplaces have shifted from physical spaces to virtual spaces, that is, to the **cyber space**. The Government of India announced a nation-wide lockdown on 24-03-2020, to slow the spread of the coronavirus infection. Hence, all workplaces were closed indefinitely. To avoid disruption to work, companies have started asking their employees to **work-from-home (WFH)** using the internet (cyber platforms). Now, logically speaking we may bring this interpretation under the inclusive meaning of a **workplace as under Section 2(o) of the POSH Act**. But, so far, the POSH Act does not recognise a concept called Cyber Workplace.

But, still, we may include any harassment done **online while in the course of work**, as it is still violative of Article 14 of the Constitution of India which speaks of right of a women to equality and Article 15 of the Constitution of India which speaks of right to live with dignity and Article 21 of the Constitution of India which gives right to practice any profession or carry on trade or business in an environment that is not hostile and is free from sexual harassment.

Hence, any kind of sexual harassment of a woman in an online work space be it on any app developed exclusively by the company or otherwise, maybe construed as a case of Sexual Harassment at Workplace.

## **CURRENT LAW IN PLACE TO DEAL WITH SEXUAL HARASSMENT AT WORK PLACE**

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** is currently the legal statute in place to deal with workplace harassment. It says that a woman can make a complaint against a harasser in the workplace. Workplaces include the transport to and from work provided by the employer. Every company employing more than 10 employees must have an **ICC (Internal Complaints Committee) and an LCC (Local Complaints Committee)**. The law intends to provide safe working spaces for women and promote their participation in the workforce.

## **WHAT CONSTITUTES A SEXUAL HARASSMENT AT WORKPLACE**

The **Criminal Law (Amendment) Act, 2013** as amendment of **Section 354A** defines what constitutes sexual harassment at workplace. Few aspects which can be taken as sexual harassment includes but is not limited to, Sexual messages being communicated through any electronic modes like WhatsApp Messenger, e-mails, gestures, body languages, comments that are sexually depicted in nature, demanding sexual favours, unwanted social invitations for a lunch or dinner together inspite of stern resistance by the woman, showing pornography against the will of the woman. **Section 509 of the Indian Penal Code, 1860** can also be invoked to as it outrages the modesty of a woman. Section 354 D as inserted by the Criminal Law (Amendment) Act, 2013 of the Indian Penal Code, 1860 may also be invoked if the perpetrator is involved in **cyber stalking of the woman while at work as in sending messages and following repeatedly in social media, and so on.**

## **CYBER LAWS THAT MAY BE USED FOR CYBER HARASSMENT WHILE AT WORK**

**Section 67 of the Information Technology Act, 2000** says that whoever transmits in an electronic media any material which has a lascivious effect or prurient interest in the minds of those who read it, then they can be punished under this Section 67A of the Information Technology (Amendment) Act, 2008. This section may hold good while the perpetrator under POSH sends any obscene material through electronic modes in work hours in a workplace to a woman.

## **ISSUES OF NON COMPLAINE OF THE ACT**

The Government of India had sternly warned the companies who are not complying with the provisions of the POSH Act of severe punishment.<sup>1</sup> It was reported by the International

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<sup>1</sup>*DNA 18 September 2014 (18 September 2014)*. "Serious legal action against organisations without a sexual harassment committee, says Maneka Gandhi". *DNA*. Retrieved 13 November 2014.

Labour Organization that very few Indian employers were compliant to this statute.<sup>2</sup> According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013.<sup>3</sup>

### **REASONS FOR NOT REPORTING THIS CRIME**

Many a times, women do not come forward to report sexual harassment at workplace citing reasons of repercussions by way of job cuts, nil promotions, societal outlook, being branded a victim and so on.

We can understand this by the published data, According to data published by the Ministry of Women and Child Development, the number of cases of sexual harassment in the workplace registered in India jumped 54% from 371 cases in 2014 to 570 in 2017. According to the ministry, 533 cases have already been reported in the first seven months of 2018 – nearly as many as for all of last year<sup>4</sup>.

This is a very bleak number of cases being reported and a majority of cases go unreported due to the probable reasons as listed above. But that should not be the case for women not to report such crimes as only when the perpetrator is warned, he may refrain from committing the crime against the society at large otherwise he may do it in any workspace he works in for now and the future.

### **MY SUGGESTION: A GENDER – NEUTRAL LAW MAY BE MORE SUITABLE**

THE POSH Act, 2013 aims at safeguarding the interests of the woman only who is subjected to sexual harassment at workplace and not of a man. There have been instances where even a man is subjected to harassment at workplace and he does not have any scope to file a case under this Act to get a relief. Hence, a more specific gender-neutral law for harassment at workplace maybe suitable.

Further, there may be cases where a woman may even use the POSH Act as a means to take revenge against men in the organisation. Hence, careful scrutiny of the complaint is required along with a fair hearing to avoid any injustice to either parties.

Also, the companies, colleges, schools, or any work place for that matter, must conduct inquiries fairly and provide a suitable remedy to the aggrieved woman so that her complaint is resolved and she feels safe to work in the environment. Moreover, I strongly feel a better enforcement and an unbiased strict implementation of this Law is the need of the hour along with proper reporting periodically regarding details of the complaints registered and resolved under this Act.

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<sup>2</sup>"India must have zero tolerance for workplace sexual harassment". Retrieved 11 November 2014.

<sup>3</sup>"Fostering safe workplaces" (PDF). *FICCI-EY*. Retrieved 29 November 2015.

<sup>4</sup><https://scroll.in/article/898327/five-charts-show-sexual-harassment-in-workplaces-is-being-recognised-but-much-more-must-be-done#:~:text=According%20to%20data%20published%20by,2014%20to%20570%20in%202017.>

Moreover, **creation of awareness** is needed for more and more employees to know that such a law exists and cases can be filed under it for workplace harassment.

## **CONCLUSION**

Thus, in this short article, I have tried to enumerate the legal recourse available against workplace harassment in India, its laws, and how cyber workspaces (the new normal) may be brought within the ambit of the existing laws by liberally interpreting it.

Workplace harassment brings down the morale of the employees thereby they would be less productive to the workforce due to hostile work environments in which they cannot use their full potential or productivity.

Employees must learn to co-operate with each other and not indulge in any untoward activity like sexual advances, etc which create a hostile environment for the entire workspace. If a female employee does not like or acknowledge the behaviour of a male employee towards her, he must refrain from doing it at once as that creates a better environment to understand and work with each other. When they take it up legally it becomes an issue and causes friction amongst the workforce in the organisation. But, that must not deter a woman employee from not filing a case of sexual harassment if she is subjected to it in the organisation. We need to wake up and complain and stand for our rights when it is violated by another person and we have all the rights to do so. I would like to re-iterate that the aggrieved woman must look into what acts constitute a sexual harassment and then prefer a complaint as not all acts for instance, like a transfer from one department to another would amount to sexual harassment and a complaint cannot be filed for mere transfer if it does not arise out of any other harassment within the organisation.

Let us stand up for our rights! May Justice prevail!

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