

## **Sexual Harassment of Women at Workplace (Health Sector)**

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### **I. INTRODUCTION**

The Twenty-first century has witnessed resurgence for gender equality and human development, leading to economic and social empowerment of women in India. Women in large numbers have acquired education and skills and entered different fields of employment, thereby making their presence felt in the decision-making process in their workplace. Thus they are gradually facing escalation of various forms of 'harassment', that is violating their human rights and "the right to work with dignity", as spelt out under Article 14 of the Constitution.

Sexual harassment, an insidious form of violence against women is common to all cultures. Sexual harassment can take a variety of forms. It includes both physical violence and subtle forms of non-physical violence such as emotional and psychological harm or suffering to women including economic and professional injuries. The incremental number of reported cases of sexual harassment of women at the workplace is attracting nationwide attention and condemnation. We have to see whether the gradual restoration of societal imbalance have made men uncomfortable to accept, share and live with women's rising power, which involves a reduction of male power viz-a-viz women's empowerment. Like other forms of violence, sexual harassment at the workplace is a demonstration of power and control, and above all it exemplifies a form of gender inequality or gender discrimination.

Sexual harassment is a gross violation of Fundamental Rights, guaranteed under Part III of the Constitution, under 'Gender', 'Equality' and the 'Right to Life and Liberty'. There does not exist any specific mechanism to deal with cases of sexual harassment as per the Indian Penal Code. It was only in 1997, that the Supreme Court of India, for the first time recognised 'Sexual Harassment' at the Workplace, as a violation of Human Rights. The landmark Vishaka judgement had outlined a set of guidelines for the prevention and redress of complaints by women of sexual harassment at workplace.

The government finally got the "**Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013**", passed a year back. During this intervening period of the Vishaka judgement and the Act of 2013, numerous shortcoming/inadequacies noticed were addressed and the scope and area of serious concerns were enlarged, making the enactment more focussed- the Act now covers both the government (organised) and the private (unorganised) sector workplace and provides for punitive clauses for its implementation and that too, within a time bound period.

Also, the concept of workplace was explained in detail .As per the Act, workplace is defined as including (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisations, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service; (iii) hospitals or nursing homes; (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; (v) any place visited by the employee arising out of during the course of employment including transportation provided by the employer for undertaking such journey and (vi) a dwelling place or a home.

The recent cases of sexual harassment by the senior lawyers and even two Judges of the Supreme Court, had led to widespread condemnation, but the domination of men in the society have gradually swept these cases under the carpet. Nevertheless, the subject has evoked heightened nationwide interest as we now regularly find that articles are appearing in the newspapers, movies ('Bawandar', 'Inkaar') are being made and TV serials are highlighting this issue.

Sexual harassment is one of the most potent areas of gender bias, in the country, that has fast merged in the national horizon after the landmark Vishaka judgement. The issue had been generally swept under the carpet and remained in a state of suspended animation for ages. The perpetrators were powerful, wielding unquestioned authority against whom the women victims remained powerless as there were no mechanisms available to them to secure justice and restore their dignity. As mentioned earlier, sexual harassment mainly fell under the domain of domestic laws and the specific word of women's 'modesty' was given new coinage as 'sexual harassment'. In the past fifteen years (since the Vishaka judgement), the issue of sexual harassment has made slow yet steady progress to attract occasional national attention, thanks to the media. It now occupies a well-defined area of women's human rights that cannot be targeted or violated nonchalantly. Voices are being heard loud and clear after the enactment of the 2013 Act, which is bound to have a firm and definite impact in the near future. The resistance and reluctance to act firmly is due to the perpetrators being the men, who are perched in different levels of authority like the judiciary, law enforcement, executive etc. where these women specific crimes are treated with disdain and just winked away. Women's shrill cry of anguish has breached the impregnable wall of men's power and authority and firmly entrenched women's rights to human dignity within the ambit of the majesty of law.

The subject has appealed to me as a woman as it is a reality faced by every woman at some point in her life. I have chosen and focussed on the **HealthSector**, because, it is here that a large percentage of women are engaged/ employed, whether as a doctor, a nurse, healthcare /paramedical staff or security, performing their duty round the clock. The nurses, who are engaged in this noble profession since time immemorial and earned recognition after the crusading work of Florence Nightingale, are the main target and victims. Their work is one of pure selfless sacrifice and devotion despite the fear, threat and harassment, at every conceivable place and time, in their workplace.

The Vishaka Judgment prompted numerous studies and surveys that looked at measures to deal with sexual harassment. Prominent among these were those of the National Commission for Women, women's organisations like Sakshi in Delhi and HengasarraHakina Sangha in Bangalore, who looked at the prevalence of sexual harassment viz-a-viz the awareness and implementation of the court's directive.

The studies have shown that a large segment of doctors and nurses in Government and private hospitals are temporarily employed or are on contract and have the fear of losing their job if they go public. Shockingly, the biggest perpetrators of abuse were patients and their family, followed by in-house doctors and non-medical staff. Nurses are the only group targeted and harassed by everyone- whether doctors, non-medical staff, patients and their relatives or outsiders. Four types of sexual harassment experiences have been widely reported by nurses:

- (a) verbal harassment;
- (b) psychological harassment;
- (c) sexual gestures and
- (d) exposure, and unwanted touch.

These studies explored the victim nurses' perceptions of the occurrence of sexual harassment in hospital environment, and the pathways of action taken. Findings confirmed the persistence of sexual harassment in the hospitals (workplace), the reluctance of nurses to invoke the complaints filing system and the ineffectiveness of existing complaints mechanisms in punishing the perpetrator(s). Findings also suggested that attitudes to sexual harassment in the hospitals mirror society's norms about sexuality and masculinity more generally — that it is normal and harmless behaviour, that it is women who provoke such errant behaviour and that (aside from rape) it is an occupational hazard for women in the workplace. These studies also investigated the nature of action taken to seek redressal, and the extent to which working hospital staff are aware of the complaint mechanism outlined by the Supreme Court. The actionable response by the authorities has been dismal, that rather dissuaded the victims to file complaints.

UN organisations like UNIFEM backed the initiative of Confederation of Indian Industries (CII) on prevention of sexual harassment at the workplace which included development of a manual titled *Enabling Environment: A Manual for Effective and Engendered Workplaces*. Industries have however been slow in taking it up.

An article by Catherine McKinnon, titled, "Sexual Harassment of Working Women", evoked my interest in this subject and gave a wide ranging perception to the issue. In order to understand further, I read leading Human Rights activist, Dr. Kalpana Kannabiran's book titled "The Violence of normal times: essays on women's lived realities", that provided to comprehend the women's point of view. Two articles written by Justice Sujata Manohar in the NHRC Journals, focussed on the seriousness of SH and the abject shortcomings of law to effectively deal with it and suggest the proactive steps needed to strengthen the mechanism to counter this crime.

Reviewing “Sexual harassment in the workplace – an intervention mode”, by C.M. Hunt, provides an intervention model, which can be used by organisations to combat sexual harassment in the workplace. Sexual harassment has been somewhat ignored over recent years, with much of the academic literature focusing on harassment specifically on workplace bullying, or psychological harassment of a generic nature. Here, the authors have specifically reviewed individual and organisational antecedents, particularly focusing on the organisation's culture and training programmes.

“Workplace sexual harassment 30 years on: a review of the literature”, by Paula McDonald, focuses on workplace sexual harassment, as it pertains to organizations, to synthesize the accumulated state of knowledge in the field. It evaluates and highlights competing perspectives and canvasses areas in need of further investigation.

“Sexual Harassment in the hospital: are nurses safe?”, written by Sudarshan Subedi and Manisha Hamal talks about how Sexual harassment against nurses can affect the work performance and productivity in hospital. They talk about how a study was conducted to identify the status of sexual harassment among nurses, namely magnitude, nature, perpetrators, consequences and reactions, and potential recommendations for prevention and control. Furthermore the book concluded by saying that sexual harassment in the workplace though an age-old problem, still exists as a serious concern and an important and widespread problem particularly in nursing sector. Appropriate preventive, control and remedial measures supported by legislative measures is essential to address the concerned issue.

*Sexual harassment in the hospital industry: an empirical enquiry* by JL Kinard brings about the rampant nature of sexual harassment. This book reveals that charges of sexual harassment within the health care industry are increasing at an alarming rate. Kinard says that most charges are filed by women who claim they were victims of "hostile environments." Nurses levy the largest number of complaints, followed by clerical/secretarial personnel, technicians, custodial workers, food service personnel, and therapists. Most charges are filed against co-workers. Approximately 10 percent of all charges of sexual harassment in hospitals are brought against physicians. Findings suggest that nursing managers and executives must discover and eliminate sexual harassment in hospital work settings and create work cultures that discourage manifestation of sexually harassing behaviours

SM Valante and V. Bullough's article, “Sexual harassment of nurses at the workplace” looks at the menace from a historical angle. It starts from the very beginning with The Civil Rights Act of 1964 which created the option for legal remedies for sexual harassment/discrimination cases. Successful court cases established the legal criteria for sexual harassment. This article discusses the history, definition, high profile cases, research, consequences, and prevention of sexual harassment. Although research is scant and little is known of how nurses respond to harassing behavior, they say how prevention requires coordinated activities of employers, individual employees, and the healthcare profession. It talks of how sexual harassment at work increases anxiety and undermines the nurse's ability to focus on the delivery of safe and competent care..

Dr. Mukesh Yadav in *Sexual harassment of women: current scenario in Indian hospitals* tells about how sexual harassment in hospitals of women doctors and nurses has become a common practice in India. He also talk of how most of them haven't heard of any Complaint mechanism and even if they do, for fear of repercussions don't take the complain route. He concludes by saying how awareness can be created to deal with this social disease.

*In Preventing sexual harassment and understanding the law*, Nelson Chan talks about the definition of sexual harassment, various types of harassment, profile of the perpetrators, their psychology, preventive steps to be taken, disciplinary action, complaint mechanism, role of the institution and state, awareness generation and further legal action.

Films like, *Ab Khamoshi Kyon*, produced by India Centre for Human Rights and Law, and posters produced by various women's groups and socio-legal organisations form part of the repertoire of materials used to generate discussions on the issue of sexual harassment at the workplace. There are also films which explode myths about sexual harassment –myths such as the one that it happens to women who are scantily dressed. The four-minute documentary *Jor Se Bol* (Shout Aloud) produced by Akshara on sexual harassment is a useful resource. In fact, Bollywood also seems to have joined the bandwagon with the release in August 2010 of a Hindi film, *Hello Darling*.

In totality, all these reading materials have left an impressionable appeal on my mind. As a woman I feel that we should fight against men's sexist attitudes with zeal. The subject assumes greater significance and importance for the women, because as per the official statistics (2011), one woman is sexually harassed every 23 minutes, leaving aside the unreported cases which will probably be a question of seconds, not minutes. Cause for real alarm!

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