

JURISPRUDENCE ON SEXUAL HARASSMENT AT WORKPLACE: AN ENQUIRY INTO FALSE COMPLAINTS

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ABSTRACT

Evolution of Jurisprudence over sexual harassment at workplace in India is a recent phenomenon. Numerable challenges were encountered at various stages of its growth. Of many, the huge influx of fake complaints by females at workplace is of serious concern. The recent enactment of law prohibiting sexual harassment at workplaces is underwent critical evaluation. The veracity of law is questionable on the pretext of rising number of female fake complaints at the workplaces. The purpose for which the law was established has undergone dilution. The repercussions are far lethal for society and the individual at large. People who encounter fake complaints have both moral and psychological turmoil. Lengthy judicial processes results in huge delays for getting rectification through the courts. This culminates into another set of responsibilities imposed on the Employers in the name of 'employer's liability' at the workplace. Though, it is established in most of the countries, India still needs to develop its own jurisprudence on it. The two typologies of harassment viz. the hostile work environment and quid pro quo are not compartmentalized as two variants of harassment under the law. Ultimately, it bestows on the judiciary to evolve jurisprudence over sexual harassment. Judiciary need to take cautious approach while handling cases of sexual harassment. Though, it was always a difficult task to deliver justice in harassment cases, it has now become complex as there is a tremendous rise in false complaints. In the light of this, the paper tries to enquire over the false complaints of sexual harassment at workplace.

KEYWORDS: *Jurisprudence, Sexual Harassment, Employers Liability, Hostile Work Environment.*

Introduction

The history of sexual harassment is as old as other social histories of crime and atrocities on women. It is evident in various forms and structures within the society. Of many, sexual harassment at workplace is one of the crucial. The importance lies also in its recent recognition as a workplace error and crime against women. It does encompass multitude of problems and dimensions within itself. This is what that makes the entire discourse of sexual harassment a critical one. The laws are evolving every then and now while the herculean task rests on the judiciaries. They are endowed with the task to handle various complexities of the problem. This ultimately leads to the evolution of jurisprudence on sexual harassment. It will help in unfolding complex situations encountered at workplace without being tangled by the law. Interestingly, in India the law on sexual harassment came into force in 2013 while the courts were governed by the Visakha Guidelines. Visakha Guidelines were provided by the Supreme Court in 1997, while recognizing the verdict of Rajasthan High Court in a landmark case of *Visakha vs. State of Rajasthan (1997)*. So, the jurisprudence came prior of law enacted by the State government. The jurisprudence firmly provides meaning and understanding to most of the complex problem associated to sexual harassment at workplace.

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The Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, of 2013, like any other law has all potentiality to handle the issues of harassment. But the real challenge encountered when cases come to the courtrooms. It is argued that no person will be left out of the purview of law, if he somehow does act in adverse to the workplace norms resulting in harassment of women. The law is stringent in the manner that even the powerful and rich cannot escape out of its purview.

In 2015, the controversy over R.K. Pachauri which was sensationalized in the media has triggered a new debate over sexual harassment. Pachauri who was heading The Energy and Resource Institute (TERI) was alleged of harassing a lady colleague. He was accused under IPC 354, 354A and 509 for outraging the modesty of women and using word, gestures or acts for outraging the modesty of women. It was argued that the people even in high profile jobs are not unknown to sexual harassment at workplace. There are patterns of behaviors arbitrarily established by men as norms which in one or the other way results in harassment of women. Usually, by making hostile work conditions men use to harass women in multiple ways. They sexually charge the workplace where women find themselves unable to work in normal ways. Contrarily, it is also argued that women who find themselves as victims of harassment are more sensitive and over reactionary to routine practice of workplace. And, women complaints are the result of this over-sensitiveness and their reactionary nature.

Surprising, there are women who use to abuse the law on sexual harassment. There rests various reasons for such behavior. Apart of the genuine complaints, the multitude of fake complaints required to be enquired. There are women who have abused the law only to create nuisance. This was evident from *Neena Shad vs. Municipal Corporation of Delhi (2010)* case. In this case, it was founded that Neena Shad was a habitual offender and use to create nuisance at the workplace. She has alleged a sexual harassment complaint against her colleague Mr. Shiv Dayal Kain. As a result of which Mr. Kain was transferred and Mr. Shree Ram was appointed on his place. But Ms. Neena Shad has complaint against Mr. Shree Ram also. In her second instance of complaint, she has alleged one Peon Mr. P.C. Dagar of manhandling too. Acting on this the Municipal Corporation of Delhi has decided to transfer Ms. Neena Shad to Nand Nagri in Delhi. While joining to the new place, Ms. Neena Shad was accompanied by two senior officers, at the designation of Chief Medical Officer (CMO) and District Health Officer (DHO). Ms. Neena Shad immediately after joining the service has alleged a complaint against the DHO Mr. Vidhya Sagar. When the entire matter went to court, it was found that Ms. Neena Shad was an employee on contract who was having apprehensions of being terminated on the grounds of her poor performance. In lieu of that and to cover-up her poor performance she has fabricated an entire edifice of false structure of harassment done to her by the employees. It was her poor performance which led her to abuse the law for ulterior purposes. Nonetheless, there are reasons for every false complaint that were brought to the courts by women.

In the evidences of fake complaints brought under the purview of law on sexual harassment at workplace, women are not always at the forefront as offenders. There are chances that they did complaint in revenge to anything happened wrong to them in past. When women find themselves at vulnerable situation subjected to any wrong instance inflicted on them, they use to revenge. And, when they did not find any suitable evidence to prove their subjection, they employ to abuse the law. In frustration of past memories, women undergo to employ legal tools to punish the wrong doer in ways which were also not legal. In India, the profound patriarchy that governs the societal norms undoubtedly provides that men govern the women in many forefronts. So, is in the cases of sexual harassment. There is uncontested probability of women employing fake complaints on the instigation of men. And, this usually happens in the cases where they are in-relationship of a family, predominantly husband-wife and brother-sister etc. Men use to instigate on pretext of various circumstances. It could happen to women, while seeking advice from the men, is misguided for abusing the law. Probability also lies in the fact that men instigate women to suffice their end in taking revenge from the common employees. And, so lays the numerable instances where they are subjected as passive agents in the hands of men to abuse the law.

The inference can be drawn that the complaints of sexual harassment at workplace are not free from doubt. The established dictum that women don't complaint on false pretext to undertake their repute at stake stands now, of less merit. It is now established that women does have malafide orientations at times and they use to abuse law on sexual harassment at workplace. This was evident in *Dr. Anil Seth vs. Delhi Commission for Women and Others (2010)* case. In that case, the respondent lady has accused

the petitioner on false charges of sexual harassment. The lady was a tenant of the house which was rented to her by the petitioner. Petitioner was a professor who has rented his property in the lieu that he went abroad for an assignment. But when he returned back to India and asked for vacation of the property, he was slapped of false charge of sexual harassment. The petitioner Dr. Anil Seth was not only subjected to counter harassment but also brought to administrative enquiries at various fronts that included Delhi State Women Commission. The case establishes the argument that women does resort to false complaints premised on ill intentions.

It is also remarkable that in cases of sexual harassment at workplace where complaint of women were premised on true facts and circumstances were also constrained by their women fellow colleagues. There are women who did helped in manipulations of evidences so that the genuine complaint pretends to be false. In *Navneet Kaur vs. Sangeeta Gupta (2009)* case, two women fellow colleagues viz. Sangeeta Gupta and Rachita Sharma aligned with the accused Mr. D.K. Sareen and Mr. D.P. Gupta and filed a criminal complained against the petitioner Navneet Kaur and her witnesses. Shockingly, the colleagues acted in adverse after the Internal Complaint Committee's (ICC) final decision awarding punishment to the accused. They tried to manipulate the case while proving the complainant Navneet Kaur as accused and the two accused as complainant. The fellow women colleagues waged their efforts to prove the petitioner's complain a fake one. For whatever the reasons may be the resultant case proves a disturbing precedence about women abusing laws to falsify the complaint of other women.

In these scenarios where the lines are blurred it is very difficult to draw any quick conclusions specially, when the accused are in high profile jobs and powerful positions. The argument is not to deny the fact that instances of sexual harassment at workplaces are very much visible there and are not absent in white collar jobs. Problem lies in the fact that those holding responsible positions and were celebrated with trust and dignity among people might get strain their reputation. False allegations do have that propensity to jeopardize the image and repute earned in years. And, once it get tarnished it's impossible to regain it again. The outreach of false complaint can be measured from the fact that the Judge of Supreme Court was also alleged of false complaint of sexual harassment at workplace. In *Swatanter Kumar vs. The Indian Express Ltd. and Others (2014)* case, the media has sensationalized a false complaint of sexual harassment at workplace alleging a Chief Justice of Green Tribunal who was also the Judge of Apex Court. The plaintiff Swatanter Kumar was subjected to defamation by media trial based on some anonymous complaint of a lady intern. Though, the court found no merits in the case and issued injunction orders against the media publicity. The court has also ordered on-time removal of media contends of all types which might result in further dissemination of adverse publicity against the judge.

The worst outcome of false complained of sexual harassment at workplace is defamation of the accused. Apart of other complex legal proceedings that an individual faces, it is the loss of repute that cannot be undone. Also, at times while facing charges, the accused does have to bear other penalties like the one in form of job loss, as happened in *G. Pushkala vs. High Court of Judicature at Madras (2007)* case, where the accused was slapped compulsory retirement over proved charges of sexual harassment at workplace. In this case petitioner Thiru Muthukumarasamy who was on deputation as Deputy Registrar to Tribunal constituted under Criminal Amendment Act, Chennai was alleged of fake complaint of sexual harassment at workplace by G. Pushkala who was P.A. to Hon'ble Judges. Premised on some writing slips made by the petitioner for his Thesis in Master of Labour Studies, the aggrieved woman has alleged a false complaint. Interestingly, the enquiry committee on the material grounds of evidence i.e. the two slips has pronounced for compulsory retirement of the petitioner. It was on the direction of the court that the order of punishment was quashed. Though the reinstatement was done in the case and the job loss was rectified but there was no remedy for the loss of repute occurred during the course of inquiry and proceedings. One has lost honour through negative publicity disseminated through media in various forms. It is here from where the argument emanates about handling the issues of rising number of false complaints of sexual harassment at workplace.

It has now become very much difficult to draw any conclusion about originality of any complaint of harassment. This is not to undermine the genuine plight of harassed women. It is undoubted that the majority of complaints are genuine and they will remain. What strikingly new is the rising number of fake complaints of sexual harassment. This has resulted in numerable negative outcomes. Though, it strikes at honour and dignity of an individual it does undermined its own sanctity for remaining true in itself. Considering the genuineness of majority of complaints it is much needed to strike a balance. The false

complaints are required to be deterred. And, the best way is to impose stringent punishments and penalties for the absconders of law. The Judiciary has remained viable to handle the cases of sexual harassment including the fake complaints and victimization on false pretext. But further it is required to put a nail on these fake complaints. And, that can be done by imposing penalties and punishment on fake complaints. This is longer run will result in evolution of jurisprudence over sexual harassment that must be immune of fake complaints.

The jurisprudence over sexual harassment at workplace does lack in building jurisprudence over 'Employers' Liability'. Though the Act of 2013 specifically provides directions for employers to follow but they lacked in imposing viable liabilities on them. Minuscule penalties are there in the law but are not sufficient to deter it further. There is an entire jurisprudence on the discourse of Employers Liability. Except in quid pro quo harassment where it occur in-between the parties secretly, in all other forms of harassment, the liability very much goes on the employer. Specifically, it is the hostile work condition that result in any form of harassment must have direct bearing responsibility on the employer. For proven case of harassment, employers were charged with heavy penalties and punishment thereto. In western countries particularly, there is an emerging trend of huge monetary compensation being awarded by the courts to the victim of harassment. It is now started in India also, as the costs for mental and psychological treatments are high and the compensation for traumatic experiences cannot be paid off. Hence, employers are now somehow catering the needs of friendly and healthy environment at the workplace with negligible toleration to harassment.

On the matter of fake complaints employers can resort to stringent punishments for those abusing the law. The internal complaint committee as mandated under the law can be facilitated with every possible infrastructure and assistance. This will help in early deterrence to fake complaints and action can be taken on time. Hence, it is required by the employers to establish a potent enquiry committee with trained staff and supporting infrastructure. Of the various instruments and mechanism that can help in addressing the issues of false complaints the most important one required to handle is, the media. It is the media circulation of news which harms the most. It usually sensationalizes the incidence and creates an adverse state of affairs. Before the case reaches to enquiry committee or to the court, media starts to defame the accused. The famous dictum of law which prescribes that an individual is presumed to be innocent until proved otherwise is unknown to media. Media is very much the voice of people and fourth pillar of the democratic edifice. It does have the right to freedom of expression but shall not be unfettered and unchecked. The argument is not to support the other way out for controlling of media where it may end in sufficing its own purpose. But it should have some self-restraints. Media, particularly the social media is very much agile to disseminate the news as it is recorded. Hence, they are the tools that spread news at the fastest. And, when the cases of harassment are reported in media, they are usually tilted towards women. Media sympathizes women victims and there is nothing wrong in that. But the problem lies when media starts trying the cases.

Media Trial as the term known is the process where media use to spread news in such a manner that it will result in building opinion. The opinion is basically in form of defamation of the accused. This is where the entire problem lies down. Media use to defame the accused in such a manner that his entire repute gets tarnished. The defamation done cannot be reverted back. The defamation done will have other repercussions too. Like, the humiliation faced at different fronts of the society and many times the loss of job caused due to defamation. Hence, the media trial results in catastrophic losses to an accused individual.

It is well establish norm that until the case is pending in the court or the matter is *subjudice*, no institution can take cognizance in any manner. In that way media is restrained in dissemination of news. And, wherever it transgresses the norm, court can give suitable directions in this regard. Like, in *A.K. Gopalan vs. Noordeen* case the court has directed media to restrain publishing any matter related to case until the same is disposed-off by the court. The Court in *Ranjitsingh Brahmajeetsingh Sharma vs. State of Maharashtra* case has firmly declared that resumption of innocence is one of the human rights. And, media should restrain itself until the court declares the verdict. And, if media by chance or knowingly fail to abide the directions of court, it can be penalize under the law of Contempt of Court. In *Delhi Judicial Service Association vs. State of Gujarat* and *Supreme Court Bar Association vs. Union of India* case, the court has penalized Media under the contempt of court. So, the legal jurisprudence also adheres to the self-restrained media in certain instances.

The veracity of argument went further when court started directing media for prior restraints. Courts have adhered to this doctrine exclusively in *Sahara India Real Estate Corp. Ltd. & others vs. SEBI & Anothers*, *Reliance Petrochemicals Ltd. vs. Proprietors of Indian Express, Express Newspapers Pvt. Ltd. & Others vs. Union of India*, *Naresh Sridhar Mirajkar vs. State of Maharashtra*, *Surya Prakash Khatri vs. Madhu Trehan* case. In these cases court has strictly ordered for media to put restrain until the case dispose of. Inference can be drawn that media is a powerful tool in the present times that works in both ways. It can benefit to the best and can also harm in the extremes. Hence, duty of the court is to strike a balance where one might get publicity for doing well but shall not be subjected to harsh criticism until proven otherwise.

Conclusion

Right to dignity is a human right and no one shall act in adverse to undermine that. It underwent strain by false complaints over sexual harassment at workplace. The rising number of complaints at workplace is of serious concern. Multiple factors for such motivations are there. Hence, there rest responsibility on employees, employers and the courts to handle them cautiously. But the most important factor is Media. It is media which sensationalize the complaints and try to disseminated information in the ways that pretends to be an opinion forming and hence trial by itself. The accused before been proved guilty has to face severe criticism and defamation. At this point, the right to dignity gets assaulted by the media news. Courts have taken mandate to restrain media in number of cases either when they are *sub judice* or when they are acting in contempt of courts. They have made prior restraint on media also. But an accepted norm, premised on jurisprudence lacks in this arena. In the cases of sexual harassment, it is now undoubted that women does have malafide intentions while complaining to the authorities. Thus, media should restrain in sensationalizing the news at any stage until cases were proven. Limited publicity can be permitted when evidences were sound enough to prove the victimization of an aggrieved and crime of the accused. But material facts must be sound and foolproof. It is to prevent any misgivings that might result in unwarranted defamation of an innocent individual. Honour must precede another party's right and particularly when the right is the Right to Freedom of Information. In the name of information, someone's honour shall not be brought under stake. Jurisprudence over sexual harassment must envisage this under consideration for a longer run.

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