## STRAGETIC SILENCE AT WORKPLACE

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#### **Abstract**

Sexual harassment is a universal problem heartwarming all women in this world irrespective of the occupation that they are in, but authorized(legal) system is sleeping and so they fail in providing them protection. Sexual harassment in the work place has drawn a lot of controversy by the many different perceptions and definitions that have characterized it. It's not all, women living in those countries having developed legal system faces other problems like being fired out of work, ridiculed, societal pressure or promises of desired promotion, etc. that makes them left with no words. Sexual harassment is about male dominance over wo<mark>men and it</mark> is used to remind women that they are weaker than man. In a society where violence against women is posed just to show the patriarchal value in commission in society, these values of men pose the furthermost challenge in curbing sexual harassment. Studies have shown that I out of every 3 working women are touched by sexual harassment. India is a democratic country. All citizens have the fundamental right to live with dignity under article 21 of the constitution of India. But there is no law specifically dealing with sexual harassment. Laws are not able to provide justice to the victims. There are various cases brought before the supreme court of India but all cases were not thriving for success in laying down novel laws for sexual harassment. Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature such that submission to or rejection of this

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conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an unapproachable, hostile, or unpleasant work environment." Sexual harassment does not inevitably have to cause economic suffering or threats/acts of sacking. The behavior of the harasser must be unwelcome. Sexual harassment continues to flourish across the social strata. The study highlights the political and socioeconomic factors responsible for this pathetic state of affairs and other inadequacies in terms of the necessary legislation to curb this abhorrent behaviour

## **Key words:**

Sexual harassment, Indian constitution, Visakha case, sexual harassment policy, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2012.

#### **Introduction:**

"You can tell the condition of a nation by looking at the status of its women." – Pandi<mark>t</mark> Jawaharlal Nehru

The goal of this report is not to hold any single employer or individual responsible for harassment. Rather, it is to illustrate what workplace harassment looks like, to explain how it affects women and their loved ones and to make recommendations about what support and intervention women need to survive harassment. It details what employers, policy makers and activists can do to reduce the chances of women experiencing harassment. The typically men oriented workplace has been replaced by a large number of women getting employment in every doable field of work. This has given rise to a number of issues that affect the integrity of the women and also have an impact on the physical, mental and social well being of the women. In its different forms, sexual harassment is still a part of the workplace irrespective of the fact that it is reported or not. Women generally do not speak of any act of sexual harassment committed to them. But this is not a trivial issue to be lightly dealt with. Any act of sexual harassment can leave a woman with physical, mental and emotional problems that would have a deep impact on her future life. The issue of sexual harassment has to be given a serious thought and people's participation should be encouraged to make every workplace safer and healthier. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized as basic human right. The issue is not just restricted to the empowerment of the women but this issue is related to the basic human rights of the women to work in a safe and

secure work environment being treated equally with the men and no fear of being a subject of sexual harassment at the hands of the male counterparts in the workplace.

In India, woman spends life either in their parent's home or of their husband's home. Justice, liberty and equality for her depends on the condition of these families. Due to industrialization, globalization, development in various fields, role of women is changing rapidly in India. Today, women in India are showing progress in almost all the fields such as education, economics, politics, media, art, space and culture, service sectors, science and technology, etc. As the role of women has shifted from family circle work to money-making world, offences against women are also increased gradually. Women in India have been facing violence in all spheres of life for thousands of years. They face domestic, political and social violence also making it a multi faceted and thorny issue.

Violence against women is fairly a result of gender relations that assumes men to be superior to women. Given the secondary status for women, much of gender violence is painstaking normal and enjoys social permit. The Constitution of India ensures and guarantees every individual the right "to practice any profession, or to carry on any occupation, trade or business" as enshrined under Article 19. Every woman has a constitutional right to participate in public employment and this right is denied in the process of sexual harassment, which compels her to keep away from such employment ("Sexual Harassment and Rape Laws in India" (2012)... While this right is only accessible alongside the state, it is a predictable right in all the major international conventions. If any action, deed or remark abridges the enjoyment of this right, that act is not warranted in any manner, unless it satisfies certain precincts as imposed under article 19. Sexual harassment of woman at the place of work exposes her to a big jeopardy and risk which places her at an undemocratic position vis-à-vis other employees and this adversely affects her ability to realize her constitutionally guaranteed right under Article 19. Sexual harassment of women at workplace is also a violation of the right to life and personal liberty as mentioned in Article 21 that no person shall be deprived of his life or personal emancipation. Right to livelihood is an integral facet of the right to life. Sexual harassment is the violation of the right to livelihood. For the meaningful enjoyment of life under Article 21 of the Constitution of India, 1950, every woman is entitled to the elimination of obstacles and of bigotry based on gender. Since the 'Right to Work' depends on the availability of a safe working environment and the right to life with dignity, the hazards posed by sexual harassment need to be removed for these

rights to have a connotation. The preamble of the Constitution of India contemplates that it will secure to all its citizens – "Equality of status and opportunity." Sexual harassment vitiates this basic motive of the framers of the constitution.

For the first time in 1997, in the case of **Vishaka Vs. State of Rajasthan and others, (AIR, 1997 S.C 3011),** 'sexual harassment' has been explicitly- legally defined by the Supreme Court of India, as an unwelcome sexual gesture or behavior whether directly or indirectly as,

- 1. Sexually coloured remarks.
- 2. Physical contact and advances.
- 3. Showing pornography.
- 4. A demand or request for sexual favours.
- 5. Any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

#### **TYPES OF OFFENCES AGAINST WOMEN**

Women in India are facing following types of offences:

Physical assault, mental abuse, Sexual harassment, Rape, Sexual exploitation, Forced prostitution, Kidnapping and abduction, Female foeticide and infanticide, Murder, Humiliation & abuse, Domestic violence etc.

## Rights Guaranteed under the Constitution of India

Part III of our Constitution of India guarantees certain rights for the protection of Women, are as follows:

- Art. 14 Right to equality
- Art. 15 Discrimination on ground of race, caste, sex etc.
- Art.16 Equality of Opportunity
- Art.19 Right to Freedom
- **Art.21** Right to life & Liberty
- Art.23 Prohibition of traffic in human beings & forced labour.
- Art. 25 Freedom of conscience & free profession, practice & propagation of religion.
- Art. 39 Certain principles to be followed by State:-
- (a) Men and Women equally have the right to an adequate means of livelihood.
- (b) Equal pay for equal work for both for men & women
- (c) Health & strength of workers men and women & tender age of children are not abused & citizens are not forced by eco. Necessity.

The concept of gender equality personified in our Constitution would be an exercise in ineptitude if a woman's right to privacy is not regarded as her right to protection of life and liberty guaranteed by Article 21 of the Constitution of India. In view of the fact that sexual harassment of women at the workplace violates their sense of dignity and the right to earn a living with dignity, it is absolutely against their fundamental rights and their basic human rights. Men and women are like two wheels of the Chariot of Life.

The term 'sexual harassment' means "a type of employment discrimination consisting in verbal or physical abuse of a sexual nature." It is a manifestation of power relations – women are much more likely to be victims of sexual harassment precisely because they lack power, are in a more vulnerable and insecure position, lack of self-confidence, or have been socially conditioned to suffer in silence(Gluck, Samantha, (2010). It was very important for the courts to recognize that gender discrimination can take the form of sexual overtures. The archetypal case of harassment involves a more powerful, typically older, male supervisor, who uses his position to demand sexual favors from a less powerful, female subordinate. Within this paradigm, heterosexual desire and male dominance are inextricably linked. Sexual harassment is a problem and experienced almost routinely by women in the workplace (as well as on public transport, the streets and other public spaces). However, in its fanaticism to provide an enabling atmosphere for women in the workplace, the legislature has cast the net very wide — sexual gestures, offensive remarks, lurid stares, embarrassing jokes or unsavory remarks might be among the litany of conduct and expression that could be caught by the new law.

The central question is whether we want the heavy hand of the law to block the lurid stare or suppress the sexual shaggy dog story, which may be somewhat embarrassing to some? Should embarrassment and shame on the topic of sex inform how we regulate sexual conduct in the workplace and elsewhere?

There are two ingredients to sexual harassment: firstly, the conduct must be unwelcome; secondly, it must disadvantage the complainant, for example by affecting her recruitment or promotion or creating a hostile work environment (Mark D. Agars, (2004). The first leg of the test places the burden on the complainant to prove that the conduct was 'unwelcome'. But what constitutes "unwelcome" conduct? Should an employee's dress style, social habits, or previous intimate relationship with a colleague in the workplace be taken into consideration when assessing if the conduct was unwelcome or welcome? The existing case law reveals that a



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complaint may fail if she does not be traditional to governing sexual norms, leading to the conclusion that what happened to her was welcome, or that she deserved it. Dress, conduct, modesty, chastity, and even profession, may be used to show that the harasser was incited to the conduct and thus constitute sufficient evidence to disqualify a claim of sexual harassment. The second leg of the definition, that the harassment must disadvantage the complainant, seems to have been either dispensed with or mitigated by the courts, leaving open the possibility that any kind of sexual remark that is neither severe nor pervasive, but may be offensive, sexist and bigoted, can be impugned under the act(Paludi, Michele Antoinette; Barickman, (1991). Research shows that the law in other jurisdictions has resulted in the curtailment of sexual speech in the workplace, and encroached on rights to equality and sexual autonomy, rather than stopped the harassment. Given the pressure on employers and the desire to avoid being subjected to litigation, employer-drafted codes can declare that the work space is sexually sterile, or employers can announce a 'zero tolerance' policy on sexual humor

## Sexual harassment includes many things...

- Actual or attempted rape or sexual assault.
- Unwanted pressure for sexual favors.
- **Unwanted** deliberate touching, leaning over, cornering, or pinching.
- Unwanted sexual looks or gestures.
- **Unwanted letters, telephone calls, or materials of a sexual nature.**
- Unwanted sexual teasing, jokes, remarks, or questions.
- Referring to an adult as a girl, hunk, doll, babe, or honey.
- Whistling at someone.
- Sexual comments.
- Turning work discussions to sexual topics.
- Sexual innuendos or stories.
- Asking about sexual fantasies, preferences, or history.
- Personal questions about social or sexual life.
- Sexual comments about a person's clothing, anatomy, or looks.
- Kissing sounds, howling, and smacking lips.
- Telling lies or spreading rumors about a person's personal sex life.
- Neck massage.

- Touching an employee's clothing, hair, or body.
- Giving personal gifts.
- Hanging around a person.
- Hugging, kissing, patting, or stroking.
- Touching or rubbing oneself sexually around another person.
- Standing close or brushing up against a person.
- Looking a person up and down (elevator eyes).
- Staring at someone.
- Sexually suggestive signals.
- Facial expressions, winking, throwing kisses, or licking lips.
- Making sexual gestures with hands or through body movements.

### **VERBAL**

- Referring to an adult as a girl, hunk, doll, babe, or honey.
- Whistling at someone, cat calls.
- Making sexual comments about a person's body.
- Making sexual comments or innuendos.
- Turning work discussions to sexual topics.
- Telling sexual jokes or stories.
- Asking about sexual fantasies, preferences, or history.
- Asking personal questions about social or sexual life.
- Making kissing sounds, howling, and smacking lips.
- Making sexual comments about a person's clothing, anatomy, or looks.
- Repeatedly asking out a person who is not interested.
- Telling lies or spreading rumors about a person's personal sex life

#### **NON-VERBAL**

- Looking a person up and down (Elevator eyes)
- Staring at someone
- Blocking a person's path
- Following the person
- Giving personal gifts
- Displaying sexually suggestive visuals

- Making sexual gestures with hands or through body movements
- Making facial expressions such as winking, throwing kisses, or licking lips.

#### **PHYSICAL**

- Giving a massage around the neck or shoulders.
- Touching the person's clothing, hair, or body.
- Hugging, kissing, patting, or stroking.
- Touching or rubbing oneself sexually around another person.
- Standing close or brushing up against another person

### **Sexual Harassment: The Law**

Sexual harassment has been recognized as most unapproachable, most violating form of violence since long in all countries. Many countries have not only taken note of how degrading experiences of sexual harassment can be for women as well as employers but have adapted legislative measures to combat sexual harassment. In India, it has been only six years since sexual harassment was for the first time recognized by The Supreme Court as human rights violation and gender based systemic discrimination that affects women's Right to Life and Livelihood. The Court defined sexual harassment very clearly as well as provided guidelines for employers to rectify and prevent sexual harassment at workplace. It is sexual harassment if a supervisor requests sexual favors from a junior in return for promotion or other benefits or threatens to sack for non-cooperation. It is also sexual harassment for a boss to make intrusive inquiries into the private lives of employees, or persistently ask them out.

## Prevention and Resolution: Skirmishing Attitudes

Patriarchal attitudes and values are the biggest challenge in implementation of any law concerning women in our society. Combating these attitudes of men and women and the personnel involved /responsible for implementation of laws and systems is most crucial in prevention of unwanted sexual behavior (Stephanie Boraas and William M. Rodgers III, (2003). Steps Employers Can Take to Prevent Sexual Harassment a policy / procedure designed to deal with complaints of sexual harassment should be regarded as only one component of a strategy to deal with the problem. The prime objective should be to change behavior and attitudes, to seek to ensure the prevention of sexual harassment.

#### As an employer know the following



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First and foremost, acknowledge that it is your legal conscientiousness to provide safe working environment for women free from sexual harassment and discrimination and that you can be held liable for sexual harassment by employees.

- Know that sexual harassment can have a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work, or leaving their job to seek work elsewhere.
- Understand the reasons why women remain silent about sexual harassment. An absence of complaints about sexual harassment does not inevitably mean an absence of sexual harassment. It may mean that the recipients of sexual harassment think that there is no point in complaining because- Nothing will be done about it; it will be trivialized; the complainant will be subjected to ridicule, or they fear reprisals.
- Recognize the tangible and intangible expenses and losses organizations experience: Costly investigation and litigation, Negative exposure and publicity, Embarrassing depositions, increased malingering.

The best way to prevent sexual harassment is to adopt a comprehensive sexual harassment policy. The aim is to ensure that sexual harassment does not occur and, where it does occur, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence.

## SEXUAL HARASSMENT POLICY

## **Adopting Sexual Harassment Policy**

What should be incorporated in an anti-harassment policy? A basic policy should set forth the following:

- An express commitment to eradicate and prevent sexual harassment and express prohibition of sexual harassment;
- A definition of sexual harassment including both quid pro quo and hostile work environment giving examples;



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 An explanation of penalties (including termination) the employer will impose for substantiated sexual harassment conduct;

A clear statement that anyone found guilty of harassment after investigation will
Policies and procedures should be adopted after consultation or negotiation with employee
representatives. Incidents suggest that strategies to create and maintain a working environment in
which the dignity of employees is respected are most likely to be effective where they are jointly
agreed.

## **Communicate Policy**

Issue a strong policy from the top authority against sexual harassment taking a "zero tolerance" approach. (TANG,2009). Make sure it gets out to all your employees either through the employee handbook or in memo form or with pay packets or with appointment letter. Have the employees sign it to acknowledge that they received and read the policy. The policy can also be posted in the workplace.

## **Put in force Policy**

Take complaints of sexual harassment critically and investigate all sexual harassment charges quickly and scrupulously and professionally maintain accurate records of the investigation and the findings make sure employees who bring charges do not face retaliation .Ensure confidentiality and time bound response to complaints.

## **Process of Filing Complaint**

Act instantly and register your complaint with the right persons. Be clear and strong in your objection. Continue to report to work and finish assigned tasks.

## Whom to approach

- Normally immediate supervisor / or Disciplinary authority/Grievance cell. You can also approach the Complaints Committee Chairperson in case the harasser is the immediate supervisor/or disciplinary authority
- At the first instance it is advisable to approach the Management for redress. However if there is failure on the part of the management then alternate measures such as approaching the State or National Commission or Police should be taken.

#### **Documenting Harassment by the Institution:**

In formal method: Maintain a Sexual Harassment Diary: Whenever the harasser approaches you make a show of writing the incident .Make the diary so obvious that the person would force to abstain from making overtures.

**Formal:** Documenting the harassment is important for use as evidence in a case or complaint. The diary may be helpful in the process. Alternately keep in safe custody any offensive material sent by the accused person. Note down in detail, information on instances of sexual harassment with dates, conversation, frequency of offensive encounters, etc. Obtain copies of your work records (including performance evaluations) and keep these copies at home. Other documents that should be collected: A company policy and procedure manual is very important to have. The company's documented policies on sexual harassment, discrimination, performance appraisals, termination, affirmative action plans can be very important to show their stated policies versus their actions. Newsletters, annual reports, company profiles, company surveys are important to show the environment and its hostility towards women. Take all letters of commendation, awards, acknowledgements and anything at all that will corroborate positive job performance. Pay special attention to documents that superiors have provided commending your work. If possible, ask clients, staff, and peers for letters of commendation. YWCA of India 38 Every document that is used during trial must be authenticated by a witness. Keep this in mind during depositions when the defense asks you where you obtained a document. If you are not clear about where you got the document, and who can authenticate it, it may not be used during trial.

# How to make a complaint-Ten steps that should be taken Start with

- 1) Date when the fist overture was made-This can even be as casual as inviting the victim for tea/dinner/or a comment about her physical appearance or any statement that is harmful but made the victim uncomfortable.
- 2) Clear statement of names / persons causing harassment-The Complaint should not be vague. It should start with the name and status of the accused person/s and should provide factual statements.
- 3) Details of incidents in chronological order-The dates, time, place and incidents should be listed out in a chronological order. It is advisable not to delay filing of the complaint, or to wait till matters become worse. Also filing of complaints once reprisals in form of memos start taking place, the situation becomes delicate. It also important to mention incidents however small or

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shameful to establish the sequence and the effect they had on the victim. Specifically mention the period when small unwelcome comments became too large to ignore.

- 4) Name witnesses or confidants if any-Sharing helps the victim to deal with the situation. This also forms part of circumstantial evidence.
- 5) If the act has been repulsive be specific.
- 6) Give factual details if resistance has lead to hostile work atmosphere.
- 7) Always file complaint/documents in writing and insist on an acknowledgement.
- 8) Wait for a reasonable time for response, but do insist on a time-bound action.
- 9) If the accused continues to harass ask the disciplinary authority/ Complaints Committee to pass on order of warning/strictures.
- 10) remember you are entitled to any assistance if you so desire and the employer cannot refuse to act on the complaint and seek a copy of enquiry proceeding in case of a criminal proceedings.

#### **COMPLAINTS CHANNEL**

Complaints Channels need to provide different routes that employees can take to file complaints; i.e., contacting the responsible authority for sexual harassment, a supervisor, calling a hotline, complaining through email, etc. Organizations need to focus on the plight of the average individual. Informal methods of resolving complaints must be part of the complaints mechanism as

- 1. The objective is to end the harassing behavior at the lowest possible.
- 2. Many complaints can be resolved effectively and positively through informal methods. Informal options act as a buffer or filter, save bad blood; prevent the office environment getting uncomfortable for all, if employees can be advised as to how to handle the situation before it gets out of hands. Platforms to resolve complaints or to stop harassing behavior must be provided before the complaints escalate into full-blown, formal complaints. The Supreme Court guidelines impose an obligation on the employer to set up a Complaints Committee to deal with the cases of harassment.

## **Complaints Committee**

Employers need to set up redress mechanism/complaints committees as per Vishaka guidelines. First Contact Persons from within the Committee or otherwise should be appointed who could try to resolve the complaint informally first before the complaint goes to the formal channels of complaints committee.

## **Desired Qualities of the Members of Complaints Committee**

- Subjectivity: A sexual act when unwelcome is sexual harassment; the unwelcome is the woman's
  subjective reality. The Complaints Committee's first job is to believe in this reality. (Unless
  something on record completely negates her complaint).
- Empathy: It is critical that the Complaints Committee empathizes with the complainant and does not judge her by their moral standards. The most important question to be answered in the affirmative that the committee and all functionaries must ask themselves while providing redress to a particular case is 'Do we believe her?'
  - Selection of the Complaint Committee members is extremely important as in most cases the committee members, if in sub-ordinate position of power at workplace to that of accused, find it very difficult to diligently carry out the responsibilities bestowed on them as heads or members of the Committee, against the superiors.

## The Complaints Committee must remember

- It needs extensive orientation for effective functioning.
- It cannot function like a criminal court.
- The complainant, when she complains, has at staked her personal life and career.
  - The Lok Sabha passed a bill, which seeks to protect women, including lakhs employed as domestic workers, from sexual harassment at workplace. The adoption of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2012 should be applauded as a landmark move in the direction of women's right to equality. Yet, a close reading of the provisions reveals how, once again, good intentions are not sufficient and the sword of progress may in fact turn into boomerangs.
- The strength of the Bill rests in the preamble, which categorically states that sexual harassment is a violation of women's fundamental rights to equality and life. It further provides that women have the right to a safe environment in the workplace, free from sexual harassment a commitment that is consistent with India's obligations under the Convention of All Forms of Discrimination against Women. This powerful endorsement of sexual harassment as a violation of women's rights gets lost in the technicalities and poorly conceptualized provisions of the bill.
- Main features of the anti-harassment bill
  - \*List of offences covers sexual remarks, demand for sexual favour, or any act of physical

advance or an unwelcome touch

\*Bill defines domestic worker as a woman employed to do household work in any household for remuneration whether in cash or kind, either directly or through any agency on temporary \*Complaint committee must for any firm with 10 or more staffers

- \*Heavy fines for non-compliance and repeat violations may lead to cancellation of licence or registration to conduct business
- \*Covers not only employees, but also clients, customers, apprentice, or daily wage workers who enter the workplace.

### CONCLUSION

All claims of harassment must be taken and critically investigated. Naturally, there may be some situations when it is clear that the behavior did not violate the employer's policy even if it upset the complaining party. For example, a male employee may have done nothing more than show too much interest in a female employee's personal life. These situations do not require a full investigation but will need some type of resolution that is understood by both individuals. Addressing every complaint prevents misunderstandings from turning into larger conflicts. It also sends a message to all employees about the organization's commitment to protecting its workforce from harassment. There is a wide debate in India on the issue that whether laws hold promise of justice for women who have been victims of violence. At the same time a need is felt to compliment this with critical evaluation of new modes of governance and surveillance. Some preventive steps to keep a check on the cases of sexual harassment are quite necessary. This goal can be achieved when sexual harassment is completely prohibited so that such incidents may be notified and circulated. Provisions for appropriate working conditions for women should also be made. Legal mechanisms cannot be the sole solution in curbing the increasing incidents of sexual harassment. At some place and time it is very much required that the apathy and fear of the public concerned with such events should last. If people will be always frightened to speak to demand their rights, then law cannot come for them as a savior. An initiative on the part of public is also required. It is of utmost necessity that such values are to be promoted which detest and vociferously oppose such decadent practices existing in the society. People must be conscious of their rights so that they can avail full benefit out of them. If a person is ignorant of what his rights are then at many a times he is not even in a position to understand the nature of injustice which was just inflicted on him.



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