



Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints

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Abstract. Sometimes people in power misuse their authority to harass women. In fact it is the patriarchal structure of our society that gives them a carte blanche to sexually harass the women. The sexual harassment may occur anywhere, be it in the office or on her way to work. The victim women have no choice but to remain silent, because our society is full of history of retaliatory actions like rape, acid assaults, etc., committed against women, if they agitate against such sexual assault. Therefore, it becomes the responsibility of the society in general and the employers in particular to develop zero tolerance against sexual harassment at workplace or elsewhere. We are aware of the tremendous role that a woman plays in an Indian family. She is a real manager and a hard worker with a soft heart. She is also the woman of the 21st century; self-sufficient, confident and successful in many areas. But when so many crimes are taking place against women every day, so much gender inequality is prevailing in our society, sexual harassment incidents are showing constant increase and hostile working conditions are rampant; does Indian society really intend to give woman a freedom, a right to equality or to uphold its fundamental rights? Or the society only expects that she will continue to succumb, compromise, stay silent and suppressed as a woman in Indian society has been undergoing in the past? The right to live with dignity pursuant to Article 21 and to pursue every occupation, business or profession, even freedom from sexual violence, as laid down in Article 19, in accordance with Articles 14 and 15 of the Indian Constitution is infringed on the basis of sexual harassment at the job. This research is conducted with the purpose of examining the nature and extent of women's sexual harassment. The purpose of this study is to gain an enhanced understanding of how female employees deal with sexual harassment and how corporate policies and practices work to protect women's interests.

Keywords: Sexual Harassment; Higher Educational Institutions; Malicious Complaints; Fake Complaints; Mental Harassment; Hostile work conditions; Corporate Policies and Practices to Protect women's interest; Gender Inequality; Infringement of Women's Fundamental Rights; extent of Sexual Harassment

I. INTRODUCTION

The social construct that the society has developed over a period of time about its male constituents, contains an inherent tendency to justify the violence unleashed against women by men. Sexual harassment is shown by the perceptions of men as being "harmless" or "casual relationships to which only overly-sensitive women object." [1] The Indian Parliament promulgated the Women's Sexual Harassment Act 2013 with the aim of protecting them from and remedying harassment at the workplace. [2]. However, in stray cases it has been seen that there was an attempted misuse of law, in order to satisfy some vendetta or due to some other reasons. Obviously, no one can, may it be a woman, be allowed to abuse the law to settle some score or to use the law as a weapon to secure personal gains. Therefore, the Act vide its section 14 also seeks to punish false and malicious complaints. The statistics released from time to time by the National Commission for Women (NCW) show that complaints regarding sexual harassment at the workplace are on a constant rise. The statistics are also revealing that the number of malicious complaints have also commensurately risen [3]. However, the first challenge in regard to the fake complaints would be to determine whether or not the allegations are born out of malicious or frivolous conduct of the complainant because complaints can be considered malicious only if there exists such an intent behind the complaint. It is provided under section 14 that malicious intent on the part of the complainant has to be established after an inquiry to be conducted in accordance with the

prescribed procedure. "Here the Internal Committee has to be conscious about the theory of 'no evidence' and 'absence of evidence' to arrive at the conclusion of malicious intent. Just because we have not seen someone being struck by lightning does not mean that lightning does not hit people thereby causing damage to the life and property. If we have not witnessed such lightning it would then be a case of absence of evidence and not of the *no evidence*" [5]. However, malicious intent is more difficult to evaluate but is still plausible. Surveys reveal that when a significant number of employees receive undue performance reviews, this results into complaints from their colleagues[4].

In one survey [5], 12% of respondents said that malicious complaints increase after evaluations and half of those who received malicious complaints do not know about malicious complaints after employee performance assessments. During the period of January 2015 to April 2015, Fraud Investigation & Dispute Services conducted a survey titled "Intensive Rehabilitation in Sexual Harassment at Workplace in India" via online interrogatory. It was hosted in India on the EY website. Different events organized by the firm gave hard copies of the questionnaire to participants. The survey received a significant number of replies. The survey indicated that, although the Act specifically mandates this, 40 percent of respondents still train their IC members. In the same survey, 44% of respondents' organizations did not show the criminal implications of sexual harassment in prominent locations.

In India, the first legislation to specifically address the issue of sexually abusive activities at workplace, was the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act of 2013. The year 2013 has also seen the law enactment (amendment) act, 2013 ('Criminal Law Amendment Act'), which defined the offence like 'sexual harassment, stalking and voyeurism' as Criminal Offence. But, the fact remains that there may be many and varied forms of sexual harassment. It is not limited to seeking for sexual favors alone, which occur in the face of threats of adverse labor consequences.

Nevertheless, it is not only the women who are the victims in all cases. Study reveals that contrary to legislative intent under the Act, 2013, in number of cases, may be in low percentage, men also face the sexual harassment or become victim of fake complaints against them. Rather, in some of the cases, men in the workplace were more vulnerable to sexual harassment, especially in the educational institutions.

II. MALICIOUS COMPLAINTS:

A proper investigation will ensure a fair, objective and thorough process of fact-finding including the identification, collection and evaluation of evidence. At the outset, it has to be viewed whether the alleged complaint contains a prima facie element of sexual harassment? Here, a superficial understanding of harassment would not be sufficient. Similarly, a superficial analysis solely relying on what the complainant has alleged, or not looking at how the harassment affects the complainant, shall also be inadequate[6]. The evidence has to be assessed in totality to determine whether any specific behaviors constitute sexual harassment or something else, such as interpersonal conflicts or unprofessional behavior, miscommunication, or potentially criminal behavior (stalking) etc.. A process-based assessment is fundamental to a careful, objective, and thorough examination of the facts using the requisite "balance of probabilities" that is the civil standard of proof [7].

The statute provides that the law enforcement officials will not retaliate against the complainants who have alleged that the Act was not properly followed or when complainants report false or malicious claims. According to the law, if during the investigation IC/LC concludes that the plaintiff has made the allegation false or malicious or the complaint was made knowing that the allegation was false or forged or misleading, disciplinary actions may be taken against the plaintiff according to the organization service rules [6][8]. The law establishes the procedure for disciplining an employee. However, if the organization does not have its own service rules in place, then the organization may impose the punishment recommended by IC/LC, which may include warnings, reprimands, write up, reprimand, withholding of pay increases, community service, counselling sessions, suspension, termination or termination with benefits. As long as the complainants have evidence to back up their claims, it is fine to deem their claims as true, even if they fail to disclose facts of which they have conclusive evidence[9][10].

III. BRIEF HISTORICAL PERSPECTIVE:

Whilst sexual harassment is a reality since humans first lived on earth, recently it has only been recognized as a serious and real problem, especially at the workplaces. The practice of sexual harassment could be at least a century old, when sexual harassment has been defined as unwanted sexual relations between subordinates at work and superiors. Sexual coercion, for example, was an integral element in African American women's slavery without the law being protected. The survival reports of women who

were engaged in manufacturing and clerical activities in the late 19th century also refer to different contexts of sexual relationships imposed by men. Initially, because the tort law gave women no adequate protection against gender-related crimes to seek compensation for damages against sexual assaults, it was used as a weapon against women for sexual coercion at the workplace. It gave rise to damages action to the extent that the assaulted woman was injured on a male property. Sexual harassment in Australia, Canada, New Zealand and Japan was first coined in the United States of America. It was later in the year 1975 come to known as Public media.

IV. SEXUAL HARASSMENT:

In the area of sexual harassment at workplace, jurisprudence has been evolved to a great extent. The entire circumstances leading to the sexual harassment have since been crystalized into two main types of workplace sexual harassments, as follows; Hostile Work Environment and Quid Pro Quo. However, the word "sexual harassment" must not receive narrow and pedantic meaning instead on the anvil of the concept as perceived at international platforms including the United Nations resolutions under CEDAW Convention & Beijing Declaration and the Beijing Platform For Action to which India is a signatory "where the 'sexual harassment at workplace' is held to be an act of violation of human rights; Women's rights to live with decency and to protect them from any form of discrimination, because no elimination of sexual harassment is possible without substantive equality between women in an employment environment as it constitutes a barrier to their ability to struggle for a safe, healthy working environment and achieve promotion, etc. at workplace as evident from the international stands in relation to sexual harassment formulated in CEDAW Convention. [11]

4.1 Empowerment Needs to be Built into the Workplace

It is time to move beyond compliance and into creating company cultures that are welcoming and supportive of employees. Failure to deal with sexual harassment charges now are no longer be acceptable. This serious issue has drawn our attention to the reality of rampant gender-based sexual harassment and abuse in the workplace. Even though a cultural shift demanding increased accountability of workplace sexual harassment may be occurring in the public eye, we need to ask what kind of interventions are being made behind closed doors. An introspective analysis of business circles reveals that existing laws are ineffective and that the prevention of sexual harassment is rather dependent on the social foundation. Unfortunately, a great number of organizations fail to address sexual harassment cases, which also sends negative feedback on the workplaces [12].

4.2 RESEARCH SHOWS THAT HARASSMENT TRAINING MAKES MEN MORE LIKELY TO BLAME THE VICTIMS.

Why training on harassment raises a backlash in the workplace? That doesn't seem reasonable. The main problem with training is how it is presented. This act assumes that men must be forced to make payments for it. And it touches on prohibited behaviors, which signals that these guys don't know where to draw the line. In this story, the message is that men can be fixed. Start a presentation by telling people they are the cause of the problem, and they will react in fear and defence. Once they're challenged, they're much less willing to support the reforms. Research shows that training men to not respond to harassment makes them more inclined to actually harass other women in turn. According to a 2018 study carried out by the Pew Research Center, 31 percent of men said sexual harassment is a major problem. Meanwhile, 58 percent of women who had been harassed said not being believed is a major problem[13].

V. LEGAL ARGUMENT MISUSE AND ABUSE

There were three major consequences for India because of the prevalence of misuse. Often the reasons given for honour killings are that either the girl or a member of the family wants the debt to be avoided or extorted by a threat or compulsion into arranged marriage [14][15][16][17][18].

For example, see for instance [18][15]. These arguments encourage calls for increased protection for men accused of sexual violence. The high acquittal rate for rape cases in rape cases in India showed the existence of false rape complaints, to a considerable extent. Domestic abuse for men was said to require extending marital rape immunity to help protect men and should be compensated in cases of men accused. Fortunately, the Delhi High Court dismissed both arguments. What is the question?

The marital rape bill was believed to be best left to the elected representative. Further government action is insufficient. Politicians' concerns about practical difficulties of removing the immunity is an

indication that they are worried that husbands will be unable to defend themselves against false charges. The third effect of the increasing prices

It is suggested that women misusing it is an excuse to dismiss all women's rights to equal protection. The government decided against including marital rape in the 2013 criminal amendments because it is not part of the customary norms.

The Law Minister stated there needs to be an overhaul of all our laws, which can, unfortunately, be abused. Violations can arise if there are gaps in the law [19]. This apprehension of many members was also shared by 12 out of the 29 parliamentarians who were debating the amendments.

VI. INTRODUCTION ABOUT INTERNAL COMMITTEE

The Internal Committee (IC) is a mandatory committee that every workplace, having 10 or more employees, must have, which makes sure that sexual harassment complaints are properly handled. In the scenario when the organization has its offices at multiple locations, it is important to have an IC constituted for each of such offices since employer has to address the issues of sexual harassment across the offices and across the organization. Every large company needs to have in place an effective IC.[20].

6.1 THE INTERNAL COMPLAINT MEMBERS: -

The Internal Complaints Committee must comprise of:

- 1) **Presiding Officer:** The presiding officer shall be a woman, at a senior rank to work in accordance with the Internal Committee policy.
- 2) **Internal Members:** It is important that at least two members of the Internal Committee should be selected from among the employees who are actively committed to women's causes or who have had social work experience or who have legal knowledge.
- 3) **External Member:** An external member of NGOs or women's organizations or persons familiar with issues of sexual harassment.
- 4) **50% Women:** Every member of the ICC must have at least half women members.

6.2 RESPONSIBILITIES OF IC

Every organization must have a safe and conducive work environment. If a customer files a complaint under POSH Act, then IC is only responsible body to investigate, and with no biasness. The IC, legally, is required to respond to complaints quickly. So, the IC is assigned to intervene in everything related to sexual harassment complaints. The sexual harassment cases tarnish the name of not only the complainants and the accused, but of the organization and its goodwill as well. Internal Committee (IC) shall be obligated to receive complaints and provide protection against sexual harassment. The Internal Committee (IC) is to be constituted at all levels of the organization and its policies should be widely published. (Reference POSH Act, 2013).

6.3 POWERS OF THE INTERNAL COMMITTEE

The Internal Committee makes a crucial contribution towards the advancement of the policy on sexual harassment Complaints. The primary purpose of the Internal Committee (IC) is (reference POSH Act, 2013):

- Implementation of Prevention of Sexual Harassment Policy.
- Resolving complaints by aggrieved people on the basis of policy.
- Recommending actions of employer

The Internal Committees shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit. These powers shall be in respect of the summoning and enforcing the attendance of any person, examining him on oath, requiring the discovery and production of documents and any other matter, which may be prescribed. This makes the job of these committees as utmost onerous and tedious, which shall be further subject to judicial scrutiny. Any laxity in their functioning may lead to a wrong judgment, which can destroy the reputation, career and life of the concern person. This will further have catastrophic effect on his family as well.

6.4 RESPONSIBILITIES OF INTERNAL COMPLAINTS COMMITTEE

- Receives sexual harassment complaints.
- Conduct an investigation/inquiry.
- Submit findings and recommendation to the employer.
- Coordinate with the employer so as to implement appropriate action.

- Keep confidentiality throughout the process.
- Submit the mandatory annual reports to the appropriate authorities.

VII. FALSE CASES OF SEXUAL HARASSMENT AT WORKPLACE

- 1) ***Usha C.S v. Madras Refineries [21]***: After inspecting the facts, the court held that the employee's allegations with regards to her promotion and study-leave was unjustified as both decisions arose in accordance with the company policy. The bench further urged the other courts to carry in mind the facts of each case individually without assuming that the woman is a victim and also stated that similar to Domestic Violence Cases and Dowry Harassment Laws there are a massive number of people who are jeopardized with false prosecution. It is equally difficult for a man who has been falsely implicated in proving his innocence in a similar way as a woman find it burdensome to accept and tell the people if she has been assaulted sexually.
- 2) ***Anita Suresh vs Union of India & Others; Delhi High Court [22]***: On careful consideration of the proceedings of the inquiry, the court decided that the complaint dated 8 July 2011 is false. The complaint contained two incidents both of which occurred in front of the petitioner's colleagues and staff and so on. The complainant could not show the identity of anyone there at the time. The witnesses were present on duty on the day of the incident but still failed to remember names of the staff members. It is not believable that the petitioner could not remember the names of anyone. During the investigation, the Committee found that no one supported the allegations of the petitioner. The respondent has not been mentioned in the complaint because of the modesty concern. The petitioner did not bother to report the false statements to the Committee. "No reason or justification" was given by the petitioner in the denial. The complaints of the petitioner appear to be untrue and fraudulent[23].
- 3) ***N.N.S. Ranavs Union of India & Others; Delhi High Court [24]***: This case should have been filed on or before 04/11/97. This fact reveals that this lawsuit was filed in 2001, 4½ years after it accrued. The case is timed out already. Plaintiff had a continuous action in this matter because the departmental inquiry was still pending against him. In case of defamation, there can be no continuous cause of action for the Libel or Slander. One year limitation does not clearly reflect how serious an issue the issue is without departmental investigation. At this point in time, it is stated by the Plaintiff that he was charged with a false case so he deserves compensation because of malicious prosecution. This suit is for damages for slander and not for malicious prosecution. If the plaintiff wanted the defendant to be compelled to pay the compensation he deserved, he could have simply sued the defendant for malicious prosecution. However, 9 years without success. Plaintiff cannot change the nature of the case during the trial. It can be said that he was the leader of Ld. .'s Counsel for the defendant wants to use the issue of the lawsuit being time barred to justify the request. The alertness of the defendants may have prevented a lot of years in the trial because the case was previously decided and was terminated. In my opinion, the question is decided in favour of the defendant and against the plaintiff. Court decision is There is no merit or substance in the appeal, which is hereby dismissed[25].

VIII. AMENDMENT REQUIRED IN INTERNAL COMMITTEE RESPONSIBILITY FOR ADDRESSING THE FALSE CASES

The dark reality of the Indian society that devastates any person's soul, disrupting his self-respect and purges the hope of living for many is that of false cases of rape, sexual assault, sexual harassment, and sexual abuse. No wonder the rate is 14.3 for every 100,000 inhabitants of male suicide for the whole of India¹. The value ranges up to 3.5 times for men in comparison to women. Despite all the ingredients of Section 209 of Indian Penal Code, victims either do not know or are shaken so that they don't file prosecution being the victims of false and fraudulent cases. In some cases, if he has the courage and the money left, the system makes sure he lets the struggle go. A man seldom fights for completion, but convictions were made including in the false allegations made against MrRanjanGogoi, former Chief Justice of India. [26] . This will further have catastrophic effect on his family as well. For example, "A senior executive working for Genpact India allegedly killed himself at his home in Noida after being suspended from his job over sexual harassment allegations, which he said in his suicide note were untrue. According to police, his wife along with a purported suicide note, which reads as follows, discovered the body of the man: "In its suspension letter the company stated that until the investigation against him had been completed, he would be prohibited from participating in official work. In his note he denied all claims and wrote that his reputation has been tarnished even if it has been proven innocent." The victim

married two years ago. In 2007, he became a process developer and became a corporate ladder, according to his LinkedIn profile. It was just before the incident that he was promoted to the highest position.” [27]

8.1 The Consequences of false case on men

- The victim is severely affected in physical, mental, psychological, social and economic health.
- Loss of employment in competitive times, loss to businesses
- The plight of these victims is rarely emphasized in our media publishers.
- False propaganda that leads to social status loss and support
- Although the social needs of women victims of abuse in society are recognized, the aid of male victims of abuse is virtually non-existent.

The need to warn the female employees that the Law on Sexual Harassment of Women at Work (POSH) contains a punitive provision for false accusations or frivolous complaints by female employees is also important for female employees. If the IC finds that the allegations are malicious or the complaint has been made by the accused woman knowing that the complaint is false, the employer may be recommended that it take action against such employee. In addition the employer may also proceed against that individual if the complainant has produced a forged or misleading document. This makes it unquestionably necessary for the plaintiff to present a substantial case based on evidence and proper professionals to avoid charging him with a malicious complaint [28]. However, the Law also says the prosecutor does not need action under this section if it is not merely incapable of justifying a complaint or providing appropriate evidence. That is clear evidence that lawyers wanted to ensure that the complainant could not have any negative consequences because a complaint or sufficient proof could not be substantiated. In addition, the Act provides for the Malicious intention of the complainant to be established following an inquiry according to the procedure prescribed before any step is suggested as an additional safeguard in order to ensure that complainants are not simply harassed for frivolous complaints, or acted against slightly. The procedure for such an investigation would always ensure that the complainant has fair opportunity to defend herself and take legal action against her. In this Act the discouraging malicious complaints made by women strikes a good balance so that males do not confront fake charges of sexual harassment, but also recognize the difficulties of gathering evidence for women who are faced with sexual wrongdoing. The Act remains to be tested seriously, but certain cases of action against women have arisen under this provision.[28][29].

The recommended amendment to the role of the IC committee in identifying fraud cases through such committee within the existing IC that collects evidence for both sides and presents it to the IC, and this way of investigation has less chance of prejudice and also the IC's judgement is more objective and judicious.

IX. CONCLUSION:

In the analysis it is found that with regular awareness campaigns conducted across the organization and possession of requisite evidence analytical skills by the IC members, they can equip themselves to differentiate between a complaint with 'absence of evidence' and a complaint with 'malicious intent'. Therefore, first and foremost would be to generate awareness among employees and other stake holders about the false complaints. This needs to be done primarily by the employer. The employer inter-alia needs to sensitize its employees regarding the penalty of filing a malicious complaint. IC members need to be appropriately trained so that they can truly understand the concept of 'no evidence' and 'absence of evidence' while dealing with the sexual harassment complaints based on which the conclusion can be reached whether the complaint fall under the 'proven' category or 'not proven' category or it falls under the category of 'malicious'. If the administration has any intelligence or information that indicate a conspiracy or spiteful intent behind a grievance, it would be desirable that conciliation be encouraged and appropriately guided. However, as the Law provides, the conciliation should not be suggested or imposed by the IC, but the person who brings the charges should know that she has a right to opt for conciliation. Evidence, which comprise of documented behavior, messages and emails, should be considered contextually instead of considering them in isolation.

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