

Sexual Harassment: A Growing Concern for Women in Indian Healthcare Industry

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ABSTRACT

Centuries of development in the field of medicine, has been one among the many indispensable major factors behind India's sky-high growth and overall prosperity. Medicine has evolved itself from being just a subject of applied sciences at clinical level to become an industry occupied in constantly increasing the life-expectancy of the man kind. The Indian healthcare industry has been making an immense contribution in improving the quality of healthcare and ancillary services to the second largest populous country in the world, which shall continue only if every employee is secured from work-place crimes like sexual harassment. An employee is considered to be a victim of sexual harassment when he or she is mentally or/and physically pressurized against his or her will to get sexually exploited by a co-employee or a superior at his or her work-place. The Indian Penal Code along with several legislations governing the Indian healthcare industry have recognized the seriousness of 'sexual harassment at work-place', calling for an immediate attention from both legal and medical fraternity.

Keywords: Worker, Hospital, Patient, Sexual harassment.

How to cite this article: Singh MM, Patnaik SK, Prabhakaran D, Srivastva P, Choudhary PK. Sexual Harassment: A Growing Concern for Women in Indian Healthcare Industry. *Int J Res Foundation Hosp Healthc Adm* 2014;2(1):41-49.

Source of support: Nil

Conflict of interest: None

INTRODUCTION

Sexual harassment at work place is evident when a potential candidate for the employment or an employee is asked to resort to sexual acts or is demanded of being sexually exploited:

- for being chosen for the employment or
- when it becomes a pre-consideration for deciding the fate of his or her employment career.

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Equal Employment Opportunity Committee (EEOC) and the United Nations define 'sexual harassment' as follows:

'Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.'

The ambit for any act to come within the definition of 'sexual harassment' is wide enough to encompass any such behavior which in any manner trespasses into a person of an individual outraging his or her modesty. Some among many such acts are identified as below:

1. Improper physical contact and nonprofessional advances.
2. Abuse of one's dominance at work-place to demand sexual favors from subordinates/co-employees threatening of grave consequences on denial.
3. Sharing and playing of pornographic material (text/pictures/videos).
4. Sexual favors/demands sought by teaching or non-teaching (permanent or ad hoc) staff of medical college/institution from its students promising better grades/privileges.
5. Maintaining institutions or its residence in a manner which by description is sexually explicit and morally-illicit further making its ambience nonconducive for academics, living or work.

MAGNITUDE OF PROBLEM

To obtain an understanding of women's experiences of sexual harassment in the health sector, an exploratory study was undertaken in 2005-2006 among 135 women health workers, including doctors, nurses, healthcare attendants, administrative and other nonmedical staff working in two government and two private hospitals in Kolkata, West

Bengal, India. Four types of experiences were reported by the 77 women who had experienced 128 incidents of sexual harassment:

- Verbal harassment (41)
- Psychological harassment (45)
- Sexual gestures and exposure (15)
- Unwanted touch (27)

None of the women reported rape, attempted rape or forced sex but a number of them knew of other women health workers who had experienced these. The women who had experienced harassment were reluctant to complain, fearing for their jobs or being stigmatized, and most were not aware of formal channels for redress. Experiences of sexual harassment reflected the obstacles posed by power imbalances and gender norms in empowering women to make a formal complaint, on the one hand, and receive redress on the other.¹

A survey by the National Women's Commission reports that 46.58% of women report sexual harassment in the work place; only about 3.54% report the matter to authorities; 1.4% reported it to the police. In 2001, a five-state survey of workplace sexual harassment undertaken by Sakshi, a NGO in New Delhi, reported that 80% of the respondents said sexual harassment existed in their work place. Only 23% had heard of the Vishaka Guidelines; 66% of these said that the institutions had not effectively implemented these guidelines. When they had been implemented, redress seemed to be biased.

In a study conducted at one governmental and three private hospitals of Kaski district of Nepal Fifty four (40.30%) respondents have ever faced some form of sexual harassment, verbal harassment being the most common form. Sexual harassment was more frequent in the nurses of age group 20 to 29 years (62.96%) and in unmarried (59.25%). Physicians were the foremost perpetrators (37.03%) followed by patient's relatives (25.93%). Regarding the ways of coping or seeking help for harassment, just ignoring the situation was the main strategy. However, some of them shared the incidents with friends and told about it to the ward in charge. Most of the respondents believed that stronger security system and legalized channels for complaint mechanism in the hospital would be helpful to reduce the harassing behavior.²

Sexual harassment occurs in residency programs with alarming frequency. One survey revealed that 75% of residents in anesthesiology, family medicine, internal medicine, obstetrics-gynecology, pediatrics, psychiatry and surgery reported having experienced discrimination on the basis of sex.³

The most common forms of sexual harassment experienced by female residents included the telling of sexist jokes, compliments on body or figure, and flirtation. Unwanted sexual contact was experienced by 13% and explicit sexual

propositions by 6.5%. Most of the responding female residents indicated that the sexual harassment was generated from a supervising physician. Fifty percent of residents experiencing sexual harassment stated that they told someone about it, most often another resident or friend. Only 23% of these residents reported it to a 14% were afraid to report sexual harassment because it would adversely affect their evaluations, and 13% believed that such reporting would not be kept confidential and might result in retribution or punishment.⁵

A more recent study⁵ among Psychiatry, Internal medicine and Obstetrics-Gynecology residents also disclosed that sexual harassment and abuse are prevalent in medical training programs. Thirty-two percent reported that their physician supervisors told them inappropriate details of their private lives, 24% asked about details of the residents' private lives that made them feel uncomfortable, 12% touched them inappropriately, and nearly 8% asked them directly for a date. More than 31% of the residents reported that a supervisor unfairly favored another trainee because of a personal relationship with that trainee, and 25% of the trainees reported that a supervisor had dated a fellow trainee.

A survey of Argentinean residents disclosed that 10% were subjected to sexual harassment; attending physicians were the perpetrators of this harassment in 14% of the cases.⁶

In yet another study, 93% of women and 83% of men reported encountering sexual harassment during their residencies.⁷

Sexual harassment among medical students also occurs, although to a lesser extent. According to one survey, 15% of graduating US medical students experienced sexual harassment.⁸ Three percent of students claimed that they were denied training opportunities because of sex rather than performance, and 2% reported experiencing unwanted sexual advances from school personnel. In still another survey of medical students,⁹ 64% of female students and 21% of male students reported having experienced sexual harassment.

Finally, a study of medical students in Japan disclosed that 54% of female students and 15% of male students experienced sexual harassment.¹⁰ Only 8% reported the abuse to authorities.

Thus it is evident that sexual harassment of healthcare personnel is a global pandemic and the studies revealed are just tip of the iceberg.

A 1994 survey of hospital has revealed that charges of sexual harassment within the healthcare industry are increasing at an alarming rate. 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 coworkers. Approximately, 10% of all charges of sexual harassment in hospitals are brought against physicians.^{11,12} SH in the workplace has become an issue of increasing concern globally in the past decades.¹

Hospital workers, who have to perform their daily routines with their coworkers, patients and patients' families, have been reported to experience more harassment than other categories of work.¹⁴ Workers in hospitals who experienced SH easily suffer from emotional distress and unsafe feelings toward the workplace, and this might result in negative effects on the quality of patient care.^{15,16}

BROAD TYPES OF SEXUAL HARASSMENT (SH)

There are two kinds of sexual harassment: quid pro quo and hostile environment.

Quid pro quo harassment (loosely translated as 'something for something') occurs when an employee is required to choose between submitting to sexual advances and losing a tangible job or educational benefit. This kind of harassment usually occurs between a supervisor and subordinate.

Hostile environment harassment is unwelcome conduct that is so severe or pervasive, it changes the conditions of the claimant's employment or educational situation and creates an intimidating, hostile, or offensive work environment. Hostile work environment harassment is not limited to sexual advances and includes sex-based actions such as display of sexually explicit materials, posters, pinups, and magazines.

Based on a hierarchical concept, SH has been categorized in sequence from mild (e.g. sex jokes or teasing remarks) to moderate (e.g. physical touch or repeated invitation) to severe (e.g. attempt to have sex). In general, the minor types of SH were more commonly seen than the severe ones, and sex jokes seemed to be the most prevalent type of SH in hospitals. Nevertheless, the recognition and perception of SH were also diverse between genders and different cultures.^{17,18}

Sexual harassment shall also include:

- Stopping a vehicle and asking a female who is a stranger, if she wants a lift in the vehicle.
- Speaking to woman who is stranger and touching woman from passing vehicle.
- Cruising in vehicle looking for females to harass.
- Stopping and asking woman for directions with a view to harass her.
- Pursuing and stalking former girl-friends.
- Gossiping and spreading information about a woman's private life.
- Ridiculing a woman on the basis of her color, ethnicity, dress or physical appearance.

As to the issue of the perpetrators of SH, physicians and other coworkers have been reported as the most common

source of SH. Some literature has also demonstrated that the most common perpetrators of all types of SH were patients, followed by doctors, other work colleagues and visitors or patient's relatives.^{19,20}

For example, gender-related jokes could be perceived as either sexual humor or sexual harassment. It is an important issue when determining the subjective meanings of sexually related behavior to avoid unnecessary misunderstandings or potential lawsuits. As the majority of nurses are female in most countries, much of the related literature studies have investigated SH focusing on the female workers in hospitals. In recent years, there has been an increase in interest by investigators to analyze gender differences regarding SH among nurses.²¹

Sexual harassment in health care is a problem because of exorbitant legal costs, lost productivity, poor morale and nonproductive absenteeism or turnover. Sexual harassment has high prevalence in healthcare. Healthcare organizations often do little to prevent it and do not respond properly when it occurs. In most modern legal contexts, sexual harassment is illegal. Harassment can include 'sexual harassment' or unwelcome sexual advances, requests for sexual favors and other verbal or physical harassment of a sexual nature.²² From various international studies, estimates of the annual prevalence rates of hospital staff who have experienced SH vary from 0.7 to 9.5%.²³ Empirically, nurses are the most vulnerable population to SH among hospital workers.^{24,25}

Numerous studies have reported a high prevalence of SH among nurses during their careers, ranging from 30 to 97%. For female doctors, SH has also been commonly reported to be as high as 77% among family physicians, 58.3% among residents and 59% among medical students.²⁶⁻²⁸

In a previous study in Taiwan, the 1 year prevalence of SH was 9.5% among the workers in a psychiatric hospital. Except for nurses and doctors, there have been relatively few studies investigating SH among the other specialties of hospital staff.^{29,30}

Sexual harassment may have a wide range of consequences.³¹⁻³³

Emotional and psychological consequences: Many harassed employees reported feelings of mistrust, fear, anger and humiliation. In the Austrian national study 40% of the harassed women felt mistrust and 35% anger. Feelings of insecurity and helplessness were described by 1 in 10 of the respondents. The national Luxembourg study found that 9% of the employees complained about nervousness and depression and 19% have become distrustful.

Psychosomatic symptoms: The results of one of the Norwegian studies suggest that muscular pain, back and neck trouble were the consequence of sexual harassment. The Swedish national study showed that 18% of the

harassed women reported headaches and muscle aches, 16% experienced stress reactions such as palpitations and sleeping problems, 12% became depressed and 2% had considered suicide. The Swedish Metro study reported that the harassment had effected the health of the respondents: psychosomatic problems (25%), stress reactions (28%) and thoughts of suicide (4%).

Interference with private life: Some studies found that harassment interferes with the private lives of the employees. In the German national study 5% of the employees who had experienced sexual harassment also disliked sexual activities in their private lives. In the UK healthcare study 59% of the harassed employees reported an adverse effect on relationships with family and friends. The national UK study reported effects on an interpersonal level: tension in relationships (24%), feeling hostility toward others after experiencing sexual harassment (14%), withdrawal from contact with other people (9%), emotional detachment from those who are normally meaningful in your life (5%), and becoming repulsed by or afraid of touch (5%).

Effect on careers, jobs and working climate: In addition to consequences for the personal well-being of harassed workers, sexual harassment also negatively affects careers, the ability to work, the working climate and motivation.

Effect on careers and jobs: It appears that a considerable proportion of harassed employees leave their jobs, either by giving notice or by taking leave of absence or sick leave. Also frequently reported are a change of workplace or being fired. The Swedish national survey and the Belgian secretary study reported an overall figure for professional consequences of around 30%. The Swedish survey reported various negative impacts: reduction in duties; less remuneration; higher demands on work performance; unreasonable criticism; and isolation. According to the Norwegian several branches study (Moland, 1997), sexual harassment had a negative impact on sick leave: harassed persons were ill twice as often as their colleagues.

Factors affecting the ability to work: One of the national studies examined consequences of sexual harassment that affected the employees' ability to work. The UK study found that 24% of harasses experienced difficulty in thinking clearly as a consequence of being harassed, 18% reported an inability to concentrate, 11% indicated a decrease in productivity, and 13% claimed to have experienced interference with their problem-solving abilities and judgement.

Consequences for the working climate and motivation of the employees: Sexual harassment affects the working climate and motivation of employees. In the Finnish qualitative research (Varsa, 1993), many women reported that harassment called their professional qualifications into question. The Finnish University study stated that staff members felt isolated from their colleagues, thought that

they had received unjust criticism from their colleagues for complaining about sexual harassment, and, consequently, their work motivation decreased. The Swedish University study reported also negative consequences for the working climate: isolation (17%), spreading of rumors (10%) and uneasiness at going to work (17%), unwarranted criticism, and change for the worse in working condition. One Norwegian several branches study (Einarsen, 1993) found that women with sexual harassment experiences were more negative about their working climate. One of the German several branches studies showed that women who had experienced sexual harassment were less satisfied with and felt more indifferent about their work. The Austrian 'training on the job study' reported that 50% of the harassed women had less joy in their occupation.

LAWS PREVENTING SEXUAL HARASSMENT IN INDIA

Since the victims of 'sexual harassment' in India are predominantly women, their safety is a matter of very high concern. The Constitution of India bestows upon its citizens with fundamental rights through its Articles 14, 15 and 21 under Part III, which unconditionally protects women from all sorts of discrimination or victimization and guarantees a safe environment free from 'sexual harassment' to exercise her fundamental right to practice/profess/carry out any profession/occupation/trade/business throughout India.

To counter the rising menace of 'sexual harassment' and in-order to encourage more number of women to feel safe at work-place, it became crucial to enact a special legislation addressing this concern. Accordingly 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013' (hereinafter referred as 'SHWA 2013') received the assent of the Indian President on 22nd April 2013 and has come into effect from 9th December 2013 onward.

Section 3 of the very SHWA 2013 is reproduced hereunder:

'Section 3 (1) No woman shall be subjected to sexual harassment at any work place.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:

- i. Implied or explicit promise of preferential treatment in her employment.
- ii. Implied or explicit threat of detrimental treatment in her employment.
- iii. Implied or explicit threat about her present or future employment status.
- iv. Interference with her work or creating an intimidating or offensive or hostile work environment for her.

v. Humiliating treatment likely to affect her health or safety.’

Chapter II of the SHWA 2013 makes it mandatory for every employer of a workplace [Section 2(o)iii of SHWA 2013 determines ‘hospitals or nursing homes’ as ‘workplace’] to constitute an ‘Internal Complaints Committee’ and Chapter III allows the state governments to establish ‘Local Complaints Committee’ in every District to meet the objectives of this act.

Section 9 in the very Act, requires the woman who is sexually harassed at workplace to make/file a written complaint to the Internal or Local Complaints Committee within 3 months from the date of the incident. If neither of these Committees is established then the complaint can be made directly to either District Magistrate/Additional District Magistrate or local Police (in accordance with the Criminal Procedure Code 1973). In case of delay beyond 3 months, the reasons causing such a delay shall be considered and reasoned by both the aforementioned committees before allowing the complaint. Such a complaint shall attract Sections 354 and 509 of the Indian Penal Code 1860 amounting to allegations against cognizable offences empowering the police to initiate investigation without any delay. SHWA 2013 has empowered the Internal and the Local Committee with the powers of a civil court (as under Code of Civil Procedure, 1973) to conduct the inquiry in accordance with applicable service rules of the workplace (Service rules/standing orders vary between Industries and Hospitals). Section 11 and Section 13 necessitates the committees to complete the inquiry proceedings within 90 days and submit the final report to the employer within 10 days from the date of completion of the inquiry proceedings. Section 13(3)ii of SHWA 2013 prescribes monetary compensation to the women victim computed on the basis of Section 15 reproduced below:

‘Section 15: For the purpose of determining the sums to be paid to the aggrieved women under clause (ii) of sub-section (3) of Section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to:

- a. The mental trauma, pain, suffering and emotional distress caused to the aggrieved women.
- b. The loss in the career opportunity due to the incident of sexual harassment.
- c. Medical expenses incurred by the victim for physical or psychiatric treatment.
- d. The income and financial status of the respondent.
- e. Feasibility of such payment in lumpsum or in instalments.’

Chapter VI of SHWA 2013 makes it mandatory for every employer in the health industry to comply by Section 19 in order to create a safer work environment for women at her

workplace. Section 19 under Chapter IV of SHWA 2013 is reproduced herein below:

‘Section 19: Every employer shall:

- a. Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.
- b. Display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee under subsection (1) of Section 4.
- c. Organize workshops and awareness programs at regular intervals for sensitising the employees with the provisions of the Act and orientation programs for the members of the Internal Committee in the manner as may be prescribed.
- d. Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry.
- e. Assist in securing attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be.
- f. Make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of Section 9.
- g. Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.
- h. Cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.
- i. Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.
- j. Monitor the timely submission of reports by the internal committee.

If redefined on the basis of the discussions made so far then sexual harassment is a form of sex discrimination evident through unwelcome sexual advances including request for sexual favors and other verbal or physical conduct with sexual overtones, either directly or by implication, particularly when submission to or rejection of such a conduct by the female employee is capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance. Non-cooperation by such an employee toward sexual advances or requests might also go on to create an intimidating or a hostile working environment for her. Sexual harassment at workplace is nothing but a gross violation of the Fundamental Rights to Gender Equality, Life and Liberty, guaranteed

to every individual by the Constitution of India. The contents of the fundamental rights guaranteed by the Indian Constitution are of sufficient amplitude to encompass all the facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights for every individual especially women.

Protection against 'sexual harassment' and the 'right to work with dignity' are universally recognized human rights by international conventions and instruments such as 'Convention on the Elimination of all forms of Discrimination against Women', which has been ratified on the 25th June 1993 by the Government of India. Beijing Declaration directs all the State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honor and dignity of women is loud and clear.

During the ILO Seminar of 1993, held at Manila, sexual harassment at work place was recognized as a form of gender discrimination against woman.

'The International Covenant on Economic, Social and Cultural Rights' contains several provisions for welfare and protection of women. Article 7 of the Covenant recognises her right to fair conditions of work and prohibits sexual harassment of women at workplace ensuring environment at the place of work remains conducive for women to work. These international instruments cast an obligation on the Indian State to gender sensitize its laws and thereby the Courts are under an obligation to uphold the objective of these international instruments.

It is mandatory for a registered medical practitioner/professional to abide by The Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, which forms part of the declaration, on the undertaking of which alone a doctor is permitted to practice. As per the very Regulations of 2002:

- A physician is obligated to maintain an image of an upright person and uphold the ideals, dignity and honour of the medical profession.
- Any such act or behavior by a medical professional which constitutes a sexual offence like sexual harassment or adultery is a grave misconduct calling for a strict disciplinary action under Chapter 7 of the Regulations of 2002.
- Chapter 8 of the Regulations of 2002 prescribes appropriate punishment and stern disciplinary action against any medical practitioner whose misconduct is proved under the very Regulations of 2002, by the inquiry initiated from the complaint made to the medical council.'

Vishaka Guidelines: In 1997, the Supreme Court of India in a Public Interest Litigation, defined sexual harassment at

workplace, preventive measures and redressal mechanism. The judgement is popularly known as Vishaka Judgement.³²

It was in 1997 in *Vishaka vs State of Rajasthan* and others, that for the first time sexual harassment had been explicitly-legally defined as an unwelcome sexual gesture or behavior whether directly or indirectly as:

- a. Sexually colored remarks
- b. Physical contact and advances
- c. Showing pornography
- d. A demand or request for sexual favors
- e. Any other unwelcome physical, verbal/nonverbal conduct being sexual in nature.

It was in this landmark case that the sexual harassment was identified as a separate illegal behavior. The critical factor in sexual harassment is the unwelcomeness of the behavior. There by making the impact of such actions on the recipient more relevant rather than intent of the perpetrator which is to be considered.

Preventive Steps

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- a. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- b. The rules/regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- c. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- d. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment toward women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Criminal Proceedings

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized

or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

Complaint Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

Complaints Committee

The complaint mechanism, referred to as in above, should be adequate to provide, where necessary, Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.³³

Workers Initiative

Employees should be allowed to raise issues sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and

person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

HANDLING FALSE CHARGES

A legislative instrument of this kind is amenable to misuse. The person against whom charges have been made goes through enough trauma and social ostracism during the tenure of enquiry. So the section 14 of the law makes it clear that if anyone makes a 'malicious' or false complaint or produce any misleading document that will attract punishment. Such action on the complainant will have to be taken only after establishing her malicious intent through an inquiry. The provision shows a prudent balancing approach between the aggrieved and the respondent. A mere inability to substantiate a complaint or provide adequate proof need not attract punitive action. So the fear of misuse of the provision need not deter a woman from making a complaint.

However there is a growing tendency among people to avoid any negative publicity of being indifferent to sexual harassment which may indirectly influence the committee /employer to propose/take disciplinary action regardless of what the investigation revealed or whether any misconduct actually had occurred.

The case can be registered under section 507 (criminal intimidation) and 354D (sexual harassment) in these issues.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Act has identified sexual harassment as a violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution; as well as the right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. The Act also states that the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India. This Act entails:

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The definition of 'aggrieved woman', who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.

- While the ‘workplace’ in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, department, office, branch unit, etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.
- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- Penalties have been prescribed for employers. Noncompliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.

Do's

- Ensure that a harassment/ sexual harassment policy is in place
- Respond quickly and seriously to any complaint of harassment
- Arrange for an independent investigation
- Ensure that the respondent is provided with full information regarding the complaint
- Provide an opportunity for both the complainant and the respondent to be present their version of the events
- Keep the process confidential
- Emphasize to all witnesses that they will be protected from any retaliation regarding their evidence
- Obtain written statements or take careful notes of all interviews
- Document, in writing, the process followed as well as the results of the investigation
- Discuss the results individually with the complainant and the respondent

- Consider providing a final opportunity for the respondent to respond to any written report of the investigator's findings or recommendations, particularly where discipline may be imposed
- Formalize and publicize complaints procedures that are easy and nonthreatening
- Provide safety for friends and supporters of complainant.
- Appoint complaints officers—one man and one woman—to serve as first point of contact
- Authorize complaints officers to resolve the issue without the committee's intervention
- Use a cheerful, comfortable, airy room for meeting the complainant
- Ensure that your body language communicates complete attention to the complainant and accused
- Treat the complainant with respect
- Discard predetermined notions of how a victim or accused should look or behave. Beware of stereotypes
- Do remember that women have the following fundamental rights under constitution:
 - Right to Gender equality Right against discrimination on grounds of sex
 - Right to practice any profession or to carry out any occupation, trade or business
 - Right to Life and Liberty.

Don'ts

- Do not under any circumstances get aggressive
- Do not insist on a detailed description of harassment
- Do not allow for interruptions when talking to the complainant and/or accused
- Do not try and determine the impact of the harassment on the complainant
- Do not discuss the complaint among yourselves in the presence of the complainant or accused
- Do not infringe the fundamental rights of women, as they are enforceable under Article 32 of the Constitution and hence, attract legal action
- Do not forget to show due courtesies toward female employees and colleagues
- Do not ever pass sexually colored remarks on woman employees
- Do not ever indulge in any unwelcome physical, verbal or nonverbal conduct of a sexual nature with any woman employee
- Do not place women employees at disadvantageous position in connection with their employment.

CONCLUSION

Sexual harassment in the workplace though an age-old problem, still exists as a serious concern and an important

and widespread problem particularly in health sector. Appropriate preventive, control and remedial measures supported by legislative measures is essential to address the concerned issue.

All medical and educational facilities should have a written sexual harassment policy in place. The policy should be made known to all personnel and affirm that the facility will not tolerate sexual harassment, will promote an environment free of such harassment, and will take disciplinary action when such harassment is discovered. The policy should also include a definition of sexual harassment, preferably including examples of behavior that does or does not constitute sexual harassment.

Policies, sanctions, accountability, training, the type of investigations and changed organizational culture help reduce sexual harassment. It is imperative that reduction of sexual harassment in healthcare is important because it is a major social issue.

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