
CYBER SEXUAL HARASSMENT FACED BY EMPLOYEES WORKING FROM HOME

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ABSTRACT

The COVID-19 crisis has accelerated the transition from work in office spaces to working remotely. India has embraced virtual workspaces, with numerous HR leaders stating that work happy with this arrangement in the short run, conflicts between the employer and employee will arise in the long haul as there are no laws in India governing WFH.

Some countries have specific laws that support work from home (WFH) but India is far from legally endorsing this 'New Normal'. For example, in the Philippines, employers are required to develop a telecommuting program that incorporates work hours, alternative workplaces, cost of equipment, occupational safety and health, applicable benefits and observance of data privacy. The employer is also required to ensure that telecommuting employees are given the same treatment as their peers working at the employer's premises.

As similar to the Philippines we should also have some laws to protect the interest of employees. Among this we should protect the workers from sexual harassment. technology has a great influence in the world. Our world has been drastically changes into digital world. Because of the influence there are merits and de merits. While analysing the de merits or threats of the digital world is cyber harassment. The statistics rate of the Cyber harassment has increased during this COVID 19. In this pandemic time period many of the employees are becoming subject to the cyber sexual harassment, no particular legislation to deal with cyber sexual harassment in the workplace.

Through this article going to discuss how women are subject to digital sexual harassment while working from home and how they can be protected under the available legislations in our country.

INTRODUCTION

The rising wave of the COVID-19 pandemic has led to many changes worldwide. In India, the most noticeable change has been in the employment sector. Rushing out of our homes and barely making it on time to our offices or organizations has been the normal way for ages. Suddenly things took a turn and now people are practicing social distancing which has led us to this new concept of working from home. Work from home has never been a common practice, especially in India since time immemorial. It is usually practiced in certain conditions like when nursing mothers start working from home post their 26 week maternity leave as provided through the Maternity Benefit Amendment Act, 2017. Other than such cases people rarely practiced the system of working from home. Now that the pandemic has pushed people in India to adopt this system, it has been noticed that it may continue for a longer period than expected, even post the pandemic situation.

Working from home being a new step in India, employees and employers are still trying to understand how things work. Our country carries many legislations for the protection and upliftment of the workers like Minimum Wages Act, 1948, the Factories Act, 1948, the Workmen's Compensation Act, 1923 and many others are vast and cover many areas of employee and employer interests. However most of these legislations do not explicitly cover the aspects of working from home as it is indeed a very new topic in our country. Among different labour legislations existing in our country one of the main legislation is Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act 2013

Through this article I am going to critically analyse, what is the extent of protection provided to employees under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the work from home scenario with respect to instances of cyber workplace harassment?

SEXUAL HARASSMENT

In developed as well as developing countries, sexual assault is widespread and includes every sector of society. The idea of equality has infected people of their society from the lowest social strata to the highest socioeconomic groups, racial, ethnic, and geographical class boundaries. It is a challenge that applies to human dignity as well as human rights and gender equality and is thus has emerged as a global issue in the field. One factor in dealing with the complex social issues has to do with women's own attitudes and beliefs being affected by their understanding

of gender as well as the societal gender biased attitude, which produces both sexual stereotypes and gender expectations¹. As per a study conducted in the year 2010, in India, every twelve minutes a woman is subjected to some sort of sexual harassment.² Due to the growing issue of sexual harassment it was finally included in the Indian Penal Code through the Criminal Law Amendment Act, 2013 which brought about the inclusion of Sec 354A which deals with sexual harassment and its punishment. The Section states that

(1) Anyone who commits any of the act of physical touch and progress including inappropriate and clear sexual disclosure or a sexual desire, demand or order, or who shows pornography contrary to the will of an individual, or who makes inappropriately colourful remarks, is guilty of sexual harassment.

(2) A person committing an offence stated in sub-section (1) under clause (i), (ii) or (iii) of the sub-section, for a period that may be extended to three years or fined, be punished with severe imprisonment or both.

(3) Any person committing the offence stated in clause (iv) of subsection (1) shall be punished with either a one-year imprisonment, fine or both.³

SEXUAL HARASSMENT AT WORKPLACE

However, the concept of sexual harassment at workplace was recognized in India by the Supreme Court through its judgment of the case *Vishakha v. State of Rajasthan*⁴, which framed guidelines to be followed with respect to sexual harassment of women at their workplace. Sometime after these policies were put in effect, the POSH Act came into being, which in fact dictates that Sexual Harassment should be dealt with in the workplace and contains many provisions regarding the same.

DIGITAL SEXUAL HARASSMENT

As we all know, the COVID-19 pandemic has brought about many changes in our lives. But the most drastic change is indeed the use of technology. Social distancing has led people to stay at their homes and do their work from home. Working from home is indeed the new normal

¹ Astha Poonia, *Sexual Harassment at Workplace*, 5 *Amity IJJS* 50, 51 (2019)

² D.K. Srivastava, *Progress of Sexual Harassment Law in India, China and Hong Kong: Prognosis for Further Reform*, (2010) 51 *HILJ* 172

³ Indian Penal Code, § 354 A 1860 (India)

⁴ *Vishakha v. State of Rajasthan*, (1997) 6 *SCC* 241

in India. Women working from home are often subjected to sexual harassment in their virtual workspaces. Cyber sexual harassment or sexual harassment through virtual platforms is something that is comparatively new in society but is indeed a pressing issue as people have started working from home due to the COVID-19 pandemic. However, the protection guaranteed to them by law is questionable as people are new to virtual workspaces and have no idea whether the same can be treated as their workplace, though they are working from home.

There are different forms of kinds of sexual harassment faced by women in their virtual workplaces. Section 2(n) of the POSH Act, 2013 states that 'Sexual harassment' comprises every unwanted act or action (direct or implied), such as physical touch and advances, order or request for sexual favours, sexual discourse, portrayal of pornogram and/or any unwelcome physical, verbal or nonverbal sexual behaviour⁵. Furthermore, implied or explicit promises of special privileges in the woman employee's employment, implied or explicit warnings of negative treatment in her employment, implied or explicit complaints about her current or future employment status, interference with her work, or creating an oppressive, offensive, or offensive working environment for her are all prohibited under Section 3 of the Act and is considered as sexual harassment⁶.

The meaning in Sections 2 and 3 is quite broad in that it contains overt or indirect sexual behaviour and constitutes unorganised and organised sexual assault⁷. In the judgment of the case of *Dr Punita K. Sodhi v. Union of India & Ors*⁸, The Court further recognised the subjective existence of sexual assault and stated: "Many women will be offended by conduct that many men deem undisputed. Men prefer to perceive types of sexual assault as innocuous social encounters against which only women who are unnecessarily vulnerable"⁹.

While roughly 60% of female employees are experiencing abuse in the workplace in the real world, the remaining 40% of women in the virtual world are unable to say something, since it might or may not fall under that type of situation. Additionally, the fear of being thought to be

⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 § 2(n), No. 14, Acts of Parliament, 2013(India).

⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 § 3, No. 14, Acts of Parliament, 2013(India).

⁷ 2Digant Raj Sehgal , Applicability of the POSH Act, PROBONO (June 20, 2020) http://probono-india.in/IndianSociety/Paper/714_Frivolous%20Complaints%20under%20the%20Sexual%20Harrasment%20Act.%

⁸ *Dr Punita K. Sodhi v. Union of India & Ors*, (2011) ILLJ 371 Del.

⁹ *ibid*

frivolous if the claim is out of the scope of the scope of sexual abuse prevents women from coming forward. As a workplace that exists virtually, it is important to know what kind of sexual advances will be considered sexual harassment. If some sexually suggestive remarks are made, unwelcome sexual verbal or non-verbal conduct is shown, pornography is seen or inappropriate or sexist jokes are made, cyberstalking and voyeurism occur, work hours are not defined and video calls are made well after office hours, a dress code is not observed during video conferences and calls, inappropriate emojis and messages are sent all these can indeed be considered as forms of digital sexual harassment¹⁰

CAN YOUR HOME ALSO BE YOUR WORKPLACE?

The definition of workplace under the POSH Act reads as:

“workplace” includes-

- (i) *any agency, organisation, individual, institution, partnership, office, department or unit created by the funds directly or indirectly provided by the state, local government, government enterprise, corporation or cooperative corporation or substantially financed by such funds as those provided directly or indirectly*
- (ii) *A private corporation, company, institution, institution, company, trust, – anti organisation, unit or service provider taking on business, professional, educational, leisure, manufacturing, health and financial operations, including manufacture, procurement, selling, delivery and service,*
- (iii) *hospitals, medical centers or nursing stations,*
- (iv) *any sporting institution, arena, sports centre or competition site, residential or not for exercise, sport or other related activities,*
- (v) *any location reached by an employee arisen from or after the process of work, including the employer's transport for such a journey,*
- (vi) *a dwelling place, home or place of stay especially house¹¹*

¹⁰ Saradha Devi A, Work From Home: Harbinger Of Virtual-Workplace Sexual Harassment, ALL INDIA LEGAL FORUM (July 30, 2020) <https://allindialegalforum.in>

¹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 § 2(o), No. 14, Acts of Parliament, 2013(India).

As we can see the scope of including one's own home is very less. So we have to understand the actual meaning of the term workplace to see whether it can include homes as most people are currently working from home.

Sexual harassment in places of work is primarily and most importantly governed by the POSH Act along with the POSH Rules of 2013. However, the question of the virtual workplace falling under the terms "workplace" as described in Section 2(o) of the POSH Act, 2013 is very ambiguous. The Act, apart from categorising different organised and unorganised areas in which women work, including housing as places of work, extends at most the term workplace to places the woman visits during her ordinary career. This act thus requires the actual appearance of a woman at her job necessary if an investigation is to be taken under this act because of sexual assault¹².

THE DOCTRINE OF NOTIONAL EXTENSION

The notional extension doctrinal, more commonly known as the theory of notional extension, is a well-known concept in the 1923 Workmen's Compensation Act, which holds a company responsible in the event of employee injuries in the course of their work. This principle of 'notional extension' has been used by courts when interpreting compensation laws whereby employers or workers are awarded in the case of accidents during their job. However one of the major conditions to avail rights under the act was whether the act occurred during the course of employment or out of the course of employment¹³.

Therefore, the issue that often emerged in such cases in determining an employer's responsibility was whether or not such causal association could be formed between such incidents and work. In certain circumstances, the determination included a clarification of what was a place of employment for the intent of including employees or staff.

In this context, in the landmark case of *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja & Ors*¹⁴, the Supreme Court decided on the applicability of the grounds of the employer with regard to the "notional expansion" concept. It was found that the principle of notional extension applied to the premises of an employer so as to include an environment that the worker passes

¹² Saradha Devi A, Work From Home: Harbinger Of Virtual-Workplace Sexual Harassment, ALL INDIA LEGAL FORUM (July 30, 2020) <https://allindialegalforum.in>

¹³ Jeevan, Shalini, Meher Tandon, The dynamic workplace in a work from home Era: Operation of the Sexual Harassment of Women at Workplace Act, 2013, BAR AND BENCH (May 31, 2020)

¹⁴ *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja & Ors*, AIR 1958 SC 881

and transfers to and fro the actual workplace. The Supreme Court also made it clear that in the facts and circumstances of each case the extent of such workplace extension should be decided. However, it may reasonably be concluded that the facilities of the contractor or employee are not restricted to rigid office room perimeters and may be extended into those physical areas.

In the case of *Sadgunaben Amrutlal and Ors. v. The Employees' State Insurance Corporation, Ahmedabad*¹⁵, similarly the High Court of Gujarat, when examining a claim pursuant to the Employee State Insurance Act of 1948, observed that the principle of notional extension may have been recourse to extend both the "time" and "location" of a fair degree, to determine whether a worker's accident can be considered in the course of work and to fulfil the purpose of a act made by the Legislature.

DOCTRINE OF NOTIONAL EXTENSION VIS-À-VIS THE SEXUAL HARASSMENT WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

Keeping these judgments in mind we can notice the fact that, the phrase "out of or during the course of employment" has also been included in the definition of 'workplace' under the POSH Act, 2013¹⁶.

Moreover the Vishakha Guidelines, laid down in the case *Vishakha v. Union of India*¹⁷, was implemented for the sole purpose of protecting working women from sexual harassment. In this case, Vishaka and other women groups filed a Public Interest Litigation against the State of Rajasthan and Union of India to enforce the fundamental rights of working women under Articles 14, Article 19 and Article 21 of the Constitution of India. The petition was filed after Bhanwari Devi, a social worker in Rajasthan was brutally gang raped for stopping a child marriage. The Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

*Saurabh Kumar Mallick v. Comptroller & Auditor General of India*¹⁸, a landmark judgment by the the Delhi High Court states that *Vishaka and Ors v. State of Rajasthan's* decision of the

¹⁵ *Sadgunaben Amrutlal and Ors. v. The Employees' State Insurance Corporation, Ahmedabad* (1981) 22 GLR 779

¹⁶ *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja & Ors*, AIR 1958 SC 881

¹⁷ *Vishakha v. Union of India*, (1997) 6 SCC 241

¹⁸ *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, 151 (2008) DLT 261

Supreme Court aimed to ensure that the term 'workplace' cannot be used in a narrow and presumptuous manner by limiting the meaning to the sentence usually referred to as 'office.' To raise female rights at work it is fair to assume that the concept of 'workplace' is usually understood liberally, not in a limited manner. "It must take into consideration emerging trends in computer and Internet technology and the advancement of information technology. A person can speak to another person or hold a business meeting in some other country during a video conference. It was already a practise for CEOs to run the office from their home. In such a situation where a certain officer, his personal assistant said, perpetrates sexual assaults on an employee, he cannot be told that he did not do the act at his 'workspace, but at his 'residence' to escape¹⁹

It can also be noticed that in the case *Ayesha Khatun v. The State of West Bengal & Others*²⁰, Calcutta High Court was of the opinion that:

Even if the place of work was not defined either in the Vishaka guidelines or in the Vishaka judgement, the word workplace should have a logical meaning such that the purpose of the guidelines is not unworkable. It is important to offer the workplace a greater and wider meaning, such that the above guidelines can be used when it is needed beyond the job to eliminate a barrier of a similar nature, preventing a working woman from working and ensuring that the workplace has a suitable and friendly environment²¹

Therefore, it may be inferred that the courts gave a broad interpretation to anywhere there was a need to expand their scope. They also expanded the definition of 'workplace' as a 'extended workplace,' to protect women at work²² Thus we can say that the concept of notional extension of the term "workplace" can indeed be considered for matters with respect to sexual harassment at workplace though employees are working from home.

CONCLUSION

Due to the Covid 19 pandemic the relevance of the work from home has increased. Many of the persons office is being shifted to the home. Actually the scheme of work from home in our

¹⁹ Id..

²⁰ *Ayesha Khatun v. The State of West Bengal & Others*, 2012(2)CHN476

²¹ Id

²² Diganth Raj Sehgal, Applicability of the POSH Act, 2013 in remote working or working from home, IPLEADERS (July 23, 2020) <https://blog.ipleaders.in/applicability-posh-act-2013-remote-working-working-home>

country is a new scheme however many of the labour legislations became silent in different interested area of the employees.

Many of the employees are still facing sexual harassment in workplace i.e through cyberspace but the law, prevention of sexual harassment at workplace it is dumb because is in doubt to consider whether cyberspace could be considered as a workplace or not.

So through this article it throws light on how women from home can take protection under the Prevention of Sexual Harassment at Workplace Act and how the notional extension of the term “workplace” can be done so as to include homes, while women are working from home. So it is necessary to include changes to protect the women who are working from home.