



## Review Article

# INCIDENTS OF SEXUAL HARASSMENT AT EDUCATIONAL INSTITUTIONS IN INDIA: PREVENTIVE MEASURES AND GRIEVANCE HANDLING

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### ABSTRACT

Building up of a value based work culture is expected to be inherent in every educational setting. The emphasis of this research paper is to set up a preventive measure and fair procedure to develop a better and reliable organisational culture in educational institutions, free from issues of sexual harassment and exploitation. In doing so this paper will look at the recent developments in the arena of sexual harassment, the mandatory legal requirements for implementing policy that act as deterrent to and safeguard victim of sexual harassment at schools, colleges and universities. The paper highlights the imperatives that are vital for rendering executable and implementable policies, procedures and remedies. The research methodology adopted for this paper is doctrinal and sources of information are both primary and secondary which includes opinion and experience of women in educational institutions, reports and articles from books, newspapers, websites, case laws, etc. Various statute books and Bare Acts like the Indian Penal Code, 1860, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and The Criminal Law (Amendment) Act 2013 has also been referred for the study. Research attempted to understand the perception of women in educational institutions towards sexual harassment issues and identify the consequences and aftermath of incidents of sexual harassment at workplace. This paper suggests measures for effective implementation of Sexual Harassment Redressal forums in Educational Institutions as prescribed by law of land.

## INTRODUCTION

Sexual harassment is the expression of unhealthy human relationship. It is not just the violation of dignity, right to social security and right to equality guaranteed to human beings in every social system but it is also a violation of right to life and peaceful existence guaranteed by law. Though sexual harassment in the context of employment has received much attention in the social and legal scenario in last two decades, including the enactment of Sexual harassment Act of 2014, the cause and impact of sexual harassment in educational institutions has not received much attention until recent times. This research paper is an attempt to impart insight on sexual harassment issues faced by teaching faculty and the students in educational institutions across India, which seriously affect women who aspire for better employment opportunities and girls who seek higher education in a developing country. Probing into the conduct of harasser, who is either the employer or the employee of educational institution and exploring how to address the grievance of the victim expediently, but equitably is the purpose of this study.

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The sanctity and security with respect to educational institutions can also be seriously impaired and tainted, when a woman subjected to sexual harassment raises her voice against illegitimate persecution. The relevancy and significance of this topic is due to the seriousness of consequences suffered by young woman and teachers who are subjected to sexual harassment, due to the existence of fiduciary relationship that exist between the aggrieved woman and the perpetrator, during their term in educational institutions. It is important for employers, employees, students and their parents to gain understanding of what sexual harassment actually is, how to respond to it and how to prevent it in educational institutions. It is the need of time to create and implement an effective Grievance Redressal Mechanism within every educational institution, to address the situation, without fail.

### Aim

The purpose of this study is to understand the role of Human Resource Department while handling sexual harassment at workplace (SHW) incidents in educational institutions.

## Objectives

- To explore the legal provisions and guidelines on Sexual Harassment of Women at workplace in India
- To understand the perception of women in educational institutions towards sexual harassment issues.
- To suggest measures for effective implementation of Sexual Harassment Redressal forums in Educational Institutions

## Background of Study: Sexual Harassment in Educational Institutions

Sexual Harassment is a social problem. When harassments with sexual taint happen at educational institutions it is not just a workplace management issue and hence it requires a proactive HRM intervention for prevention of human rights and human dignity. Sexual harassment includes “such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography, and sexual demands - whether by words or actions” (Singh, 2009). Way back in 1982, Benson and Thomson of University of California conducted a study in Sexual harassment on a University Campus and figured out that among the random sample of undergraduate women at a major campus in United States, 30% reported of having received unwanted sexual attention from atleast one male instructor during their four years at college.

The general pattern of response that emerged from the study was that women carefully monitor and try to avoid instructors who try to advance to them sexually and when harassment continues and crosses limits of tolerance women often lose their academic self confidence and becomes disillusioned with male faculty. In an article on the influence of race and gender on student self reports of sexual harassment by college professors, authored by Kalof *et al.* (2001) survey result revealed that out of 525 undergraduates, about 40 percent of the women and 28.7 percent of the men had been sexually harassed by a college professor or instructor within or outside the campus. Any conduct which, under reasonable grounds, leads a woman to believe that her objection would result in adverse employment action or would create a hostile working environment, amounts to discrimination, which is a serious form of violence, amounting to criminal offence in India. In the context of educational institutions, any kind of intimidation or threat which aims to make clear to the woman who objects that her non cooperation or complaints or resistance in any manner will have adverse consequences reflected in her examination results, if she is a student or on her promotion or job prospects, or job security in case of a teacher, is considered discriminatory.

There are a number of newspaper reports on sexual harassment of women in educational institutions premises in recent years. Medha Kotwal Petition on SHW of a PhD student by her guide at M S University Vadodara complaints against a senior professor at Lucknow University (Times of India, 2003). In October 20, 2004, students had beaten up an anatomy professor from Versova, Andheri, for alleged sexual misconduct (*The Indian Express*, *Mumbai Newslines*, 21-10-2004). In early 2014, a female assistant professor at a college affiliated to Sardar Patel University (SPU) and who is working as a research student at SPU's Department of Psychology had registered a

sexual harassment complaint against L R Yagnik, a professor of department of psychology. In this case, the state education department issued directions for taking appropriate steps to take up the complaint and to proceed with investigations according to new laws framed by Indian Government on Sexual Harassment of Women at Workplace (Times of India, Vadodhara, 18-09-2014).

## Legal Position on Sexual Harassment in India

Sexual harassment is emotionally abusive and creates an unhealthy, unproductive atmosphere at the workplace. Sexual Harassment would normally fall under two categories - quid pro quo and creation of a hostile working environment:

- Under the quid pro quo ( this for that) form of harassment, a person or authority, usually the superior of the victim, demands sexual favours for getting or keeping a job benefit and threatens the employee of dare consequences if the conditions are not met.
- A hostile work environment arises when a co worker or supervisor or superior at work, creates a work environment through verbal or physical conduct that interferes with another person's job performance or creates the workplace environment which is intimidating, hostile, offensive or humiliating and experienced as an attack on personal dignity.

Sexual harassment has been recognized globally as most intimidating, most violating forms of violence since long. Vishaka vs. State of Rajasthan (1997) is the pioneering case in India where the apex court recognised sexual harassment at the work place as a human rights violation and the judgement of the case laid down guidelines for the effective enforcement of basic human right of gender equality through prevention, protection and punishment of sexual harassment. It directed the State, public sector & other institutions to set up a complaint mechanism. The court relied on the Convention on the Elimination of All forms Discrimination against Women, adopted by United Nations, in 1979 and held that in the absence of any law in the field in the country, international treaties can be relied upon to bridge the gap and protect human rights of people in India.

Until the landmark decision in Vishaka Case was delivered, there was as such no law or rule in India that specifically addressed Sexual Harassment. Even the preventive and retributive justice rendering mechanism in India had no specific provision for dealing with sexual harassment until recently. The provisions of the Indian Penal Code, 1860 Section 354 (outraging modesty of a woman), section 375 (Rape) and section 509 (dealing with act intended to insult the modesty of a woman) were all insufficient to address and curb the menace of sexual harassment incidents in India. Sexual Harassment infringes the Fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under article 21 of the Constitution which includes a right to a safe environment free from Sexual Harassment. Many judgements of the Supreme Court interpreting these Articles have emphasised the right to lead a life with dignity assured by Article 21 of Indian constitution.

There are Acts such as Indecent Representation of Women (Prohibition) Act 1987, but where crippled and inadequate to meet the harassment situations. Earlier the cases of discrimination and workplace harassments were dealt with by referring to provisions like Article 15 and Article 19 (1)(g) of Indian Constitution (Article 15: "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth" and Article 19(1) (g): Right to Freedom which upholds a woman's right "to practice any profession or to carry on any occupation, trade or business").

As per the Vishaka Judgement (Vishaka and Anrs vs. Union of Ondia, 1997), the Guidelines, until such time a legislative framework on the subject is drawn up and enacted, shall have the effect of law and the guidelines are to be mandatorily followed by organisations, private and public for dealing with sexual harassment cases. It took long 16 years for Indian legislatures to enact a Bill that provide a mechanism to redress grievance pertaining to sexual harassment and gender equality of women in India (Gopalakrishnan, V and Shroff, 2014). In the case of Bangladesh National Women Lawyers Association vs. Government of Bangladesh (2009), Bangladesh High Court cited good number of cases of sexual harassment of female students and teachers in educational institutions and expressly stated that guidelines in Vishaka 's Case would cover educational institutions and employees.

Finally in 2013 India witnessed the introduction of some significant legislations and regulations pertaining to sexual harassment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (known as the Sexual harassment Act), the Criminal Law (Amendment) Act, 2013 and the Gender Sensitisation and Sexual Harassment of Women at the Supreme Court of India (prevention, Prohibition and Redressal) regulations, 2013 taking into consideration the seriousness of situation in India with reference to sexual harassment incidents. IPC was amended in April 2013 to include a new section pertaining to sexual harassment of women. The criminal law amendment Act has introduced Section 354 A which enlists the acts which constitute the offence of sexual harassment and prescribes penalty and punishments for such acts.

Section 2(a) of the Sexual Harassment Act, 2013 stipulates that no woman shall be subjected to sexual harassment at any workplace. This brings educational institutions, public, private and autonomous, under the purview of the Act. In fact the ambit of the Sexual Harassment Act is very wide and is applicable to organised and unorganised, private and public sector, including government bodies, organisations carrying on commercial, vocational, educational, entertainment, industrial, financial activities, hospitals, nursing homes, educational institutions, sports institutions, stadiums used for training individuals and dwelling places and homes. As per the Act, an 'aggrieved woman' in relation to a workplace is a woman of any age, whether employed or not, who alleges to have been subjected to any act of harassment.

### Research Methodology

To conduct the study, researcher selected 110 female participants from various higher education institutions in India who were willing to share their experience and opinion on sexual harassment issues at colleges and universities where they study/work.

The targeted sample size of 10 institutions was selected initially, but to ensure adequate representation of institutions the sample size was increased to 14. The institutions selected for studies includes flagship colleges in the state of Kerala and the participants are of the age group ranging from 18 to 50 and the affiliation of the participant to educational institution was either as a student, a faculty or as an administration staff. All participants were females and the purpose of gender sensitivity was to identify the perspective of women towards sexual harassment issues and to identify the impact of the problem on their mindset and approach.

The research was carried out through personal interviews as it was hard to generalise the queries and questions beyond the personal and professional background of participants. Interview questions mainly focused on the attitude of participants towards sexual harassment at workplace, the sensibility of women to identify as to what acts or actions amounts to sexual harassment and offence in work place settings, their awareness of legal framework on issues involving sexual harassment, knowledge about educational institutions policies and procedures on reporting of such incidents etc. Secondary data was gathered from articles, law journals, textbooks and Bare Acts.

### Observations and Findings

Based on the personal interviews conducted among female students, faculties and staff at educational institutions in Kerala, researcher understood the fact that women are directly and indirectly subjected to sexual harassment in institutions due to their higher level of tolerance for injustice and due to their lack of confidence to fight against the situation. The fear of disgrace and blames also prevent women from lodging complaints against the perpetrators, in educational institution settings.

The habitually told suggestive stories and offensive jokes by colleagues and classmates are not been identified and categories by majority participants as sexual harassment incidents. Most women who participated in the study revealed that they normally brush off the unwanted comments, queries and suggestions put forward by people at workplace even if the topic relates to sex or sexual matters falling within preview of personal affairs. Being treated and considered 'differently' at workplace was also not identified by participants as acts amounting to sexual harassment. But unanimously participants have expressed the opinion that every sexual harasser should be punished so that similar instances and cases do not arise in the campus. Also participants acknowledged the fact that all reported cases of sexual harassment are duly considered by the management of institution and appropriate steps are being taken to handle the situation and against the wrong doer after enquiry proceedings. Above 80% of the participants of the study opined that the key reason for sexual harassment incidents at educational institutions is the result of lack of courage, fear of disgrace and social isolation experienced by the victimised person on filing of a complaint against the abuser. Less than 5% harassment victim's reports to college authorities about incident of unacceptable advances, approaches and sexual behaviour of any men or women who are at a higher, equal or lower level than them in position and authority at educational institution.

Another important observation from the interview was the many times there are instances where the victims are discouraged by college counsellors and management from filing a case with police about sexual harassment. Again 85% of educational institutions do not have a policy framed to deal with sexual harassment complaints despite the legal mandate for having the same.

### Impact of Sexual harassment in Educational Institutions

The effect and impact of sexual harassment varies from person to person depending on the severity of the harassing behaviour. According to Kapoor and Dhingra (2014) "Women, who have suffered the humiliation and harassment, show certain peculiar characteristics in their behaviour such as frightened, guilty, powerless, angry, ashamed, depressed, numb and lacking self confidence. Thus these offences highly influence the lives of the women in many negative ways. They are not only physical abuse, but also an emotional mental torture which walks with them throughout their lives." In academic community, when a woman is harassed by an instructor or a co worker, there can be concerns for coming forward, lodging a complaint and facing the inquiry committee for fear of reputation, fear of retaliation, fear for implications to one's career and academic pursuits.

Some of the effects a victim lady faculty or staff may experience after an incident of sexual harassment are as follows:

- Fear and discomfort of having ones personal life help up for public scrutiny
- Fear of retaliation from harasser
- Stress on peer relationship
- Loss of interest in job
- Being subject of humiliation and gossips
- Character defamation
- Becoming publicly sexualised
- Loss of job/career.

The impact on a female student may be as follows:

- Anxiety, frustration, headache, depression, sleeplessness, anger etc.
- Feeling powerless, helpless and out of control
- Loss of confidence and self esteem
- Social withdrawal and isolation
- Suicidal thoughts and attempts
- Increased absenteeism to avoid harassment
- Illness from stress and trauma
- Course drop out or change in academic plans

### HRM and Grievance Redressal Mechanisms

An educational institution, be it a nursery, school, college, university or training centre, is a respectable and responsible workplace. Considering the importance of the education sector as one of the major channels for empowering woman in India, where large number of females are currently employed or are present as students, a proper and effective sexual harassment complaint mechanism need to be established and operated efficiently.

The Sexual Harassment Act requires an employer to set up an "Internal Complaints Committee" (ICC) at each office/branch of institution, which employs not less than 10 employees, to hear and redress grievances pertaining to sexual harassment. The complaint need to be filed by the aggrieved party, in writing( six copies) with supporting documents, to ICC within 3 months from the date of incident and in case of series of incidents, within a period of 3 months from the date of the last incident. In case of physical incapacity, mental incapacity or death of the aggrieved person, law makes provision for friends, relatives, co workers, psychologist, psychiatrists etc. to file a complaint in this regard. Upon receipt of the complaint, 1 copy of the complaint need to be sent to the respondent within 7 days and the latter should file a reply to the complaint along with his list of supporting documents and the name and addresses of the witnesses within 10 working days. Law mandates that the inquiry has to be completed within a total of 90 days from the date of receipt of the complaint. The Inquiry report has to be issued within 10 days from the date of completion of inquiry. The employer is required to act on the recommendations of the committee within 60 days of the receipt of the Inquiry report. Appeal against the decision of the committee is allowed within 90 days of the date of recommendations.

There are a set of punishments that may be imposed by the organisation, based on the Sexual Harassment Act, on an employee for indulging in an act of sexual harassment. Based on the nature and gravity of the incident, the reprisal may vary as prescribed under the service rules of the organisation.

Action may be taken in any of the following forms:

- Issuance of Warning
- Demand for a written apology
- Impose bond of good behaviour
- Include adverse remarks in the Confidential Report
- Debarring from supervisory duties
- Denial of membership of statutory bodies
- Denial or re-employment
- Stopping of increments/promotion
- Reverting, demotion
- Suspension
- Dismissal
- Any other punishment as may be warranted by the case.

In the absence of service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, pay rise or increment, terminating the respondent from service, undergoing counselling session or compulsory community service. Again, deduction of compensation payable to the aggrieved person from the wages of the respondent can also be levied. The compensation payable to aggrieved woman, shall be determined based on the mental trauma, pain, suffering and emotional distress caused to the aggrieved person, loss of career opportunity due to the incident of sexual harassment, medical expenses incurred by victim for physical or psychiatric treatment, income and status of the alleged perpetrator and feasibility of payment. Section 354 A of Indian Penal Code, 1860 r/w Criminal Law (Amendment) Act, 2013, makes sexual harassment punishable with imprisonment, the term of which may range between 1 - 3 years or with fine or both.

Since the amendments criminalizes all acts of sexual harassment, employers shall be required to report any offences of sexual harassment to the appropriate authorities. This being the general rule, considering the environment and responsibility bestowed to an educational institution, the punishment for the harasser and the compensation for the victim in genuine cases shall be detrimental.

### Challenges in Redressal Mechanism

Sexual harassment is a common occurrence in India, that goes unspoken due to social stigma or fear of retribution from the society. One of the major problems in dealing with sexual harassment in educational institutions is that such harassment is not recognised as offensive and discriminatory behaviour. Even though most sexual harassment cases in schools, colleges and universities go unreported, this practice is not rare. According to National Violence Against Women Prevention Research Centers reports, 40 to 60% of female students and working woman in educational institutions are victims of sexual harassment. The under-estimation of expressed and implied actions, words and expressions with sexual tint, as trivial and harmless flirtations, by society shields the culprits in many reported cases. In rigid and conservative social systems, women who are victims of sexual harassment show an innate tendency to either avoid the harasser or ignore the harassment, to avoid complications of complaints handling methods, interrogations and social mockery.

Few other hope that it would be a onetime incident and that they can handle such situations tactfully in case of future advancements. Chances are that they end up feeling embarrassed, helpless and powerless, finally suppressing their grievances to escape social stigma and in fear of losing employment or for fear of failing academically due to threat from harasser. Studies indicate that sexual harassment is offensive, traumatising, frightening and insulting to women of all ages (Manohar, 2012). The definition of term sexual harassment does not include the words 'verbal, textual, physical, graphic or electronic actions', which should have been added in order for the purposes of clarity, as it would cover some of the technological developments of modern times. The absence of this clarification may defeat the purpose of law in certain cases which involve harassment of such nature. It is therefore important to categorically state in the sexual harassment prevention policy, the nature and texture of inappropriate sexualised behaviour from the part of teachers and other staff at schools and colleges towards females in educational institutions which would be considered as offensive while evaluating conduct and context of each case.

### Non Compliance with the Sexual Harassment Act

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained in the Sexual Harassment Act, law prescribes a monetary penalty of up to INR 50,000/- and a repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

### Effective Implementation of Grievance Redressal Mechanism

The first and foremost step to prevent and address sexual harassment is to frame policies and adopt measures to generate awareness among employees of organisation. There should be a sexual harassment policy, a general harassment policy and a policy on how sexual harassment cases investigations are to be conducted in the organisation, in case of a complaint. In compliance with the legal requirements every educational institution should have an ICC panel for dealing with issue of sexual harassment. Prior to that, there should be a policy framing committee, a well defined complaint intake process, an efficient management system of intake communication, a body for conciliation and complaint investigation, legal aid cell and a psychological assistance centre headed by professionals with expertise in the respective areas. There need to be a system in place to inform the faculties, staff and students of their rights and responsibilities. Awareness programs need to be organised to disseminate the policy of educational institution against sexual harassment to students and staff. Training programs need to be imparted for campus employees who intake sexual harassment complaints, who educate others in the campus about sexual harassment policy, the constitution and operations of intake committee and the remedial measures available to the aggrieved person.

### Recommendations for Effective formulation and Implementation of a Sexual Harassment prevention and Redressal mechanism

- Create a written policy for zero tolerance in sexual harassment cases. Formulate and disseminate internal policy, declarations and posters for prohibition, prevention and Redressal of sexual harassment in the institution.
- Clearly define 'Sexual Harassment' so that no one can claim ignorance as to what amounts to inappropriate behaviour amounting to sexual harassment.
- Include two categories of sexual harassment in the ordinance; quid pro quo and hostile work environment.
- Display conspicuously at workplace the penal consequences of indulging in such acts that constitute sexual harassment.
- Organise seminars, workshops and awareness programs at regular intervals for sensitising employees on the issues and implications of workplace sexual harassments. Give examples and narrations as to what amounts to sexual harassment.
- Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc. Treat sexual harassment as misconduct and initiate service rules and disciplinary proceedings against the alleged person.
- Cause to initiate action under IPC, 1980 or any other law in force, against the perpetrator, if the aggrieved person so desires. Provide assistance to the aggrieved person to file a case or initiate a proceeding against the perpetrator under any law in the country.
- Do not guarantee absolute confidentiality to either party but take measures to maintain the investigation as confidential as possible.
- Declare the composition and constitution and contact details of ICC and its members.

- Justice delayed is justice denied. Hence initiate the proceedings as soon as the complaint is received from the aggrieved person. Evaluate evidence from every source and maintain effective communication with all parties concerned. Organisation's policies and legal guidelines need to be strictly adhered so that there is no room for confusions, misinterpretations and misuse of power vested in the hands of Redressal committee.

### Conclusion

Sexual harassment of women is an universal problem and its gravity is felt by all concerned around the world. Nations have gone for various legal approaches to curb harassment issues. With the new law in India relating to safety of women in workplace with all stringent provisions for awareness and preventive measures, every woman at the place of work and study, who fall within the jurisdiction of educational institution, including its, academic, non-academic staff and students should be protected from sexual harassment, intimidation and exploitation while they are associated with the campus. Our purpose shall be to instil a culture that every woman shall have a right to be free from Sexual Harassment and the Right to Work in an environment free from any form of Sexual Harassment.

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