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A STUDY ON UNDERSTANDING WORKPLACE SEXUAL HARASSMENT AND ITS ATTRIBUTES

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ABSTRACT

"Uninvited and unwelcome verbal or physical behaviour of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student)".

Merriam

Sexual harassment is unwanted sexual action which would make a person feel offended, intimidated. Sexual harassment said to be non-consensual interaction. It is a behaviour that is not mutually agreed upon. Sexual harassment can be committed against men and women. Sexual harassment is against the law and is covered under the Equal Opportunity Act, 2010. Sexual harassment at the workplace does not only include employers and employees but also volunteers and unpaid workers. Sexual harassment need not necessarily be of sexual in nature; it can also be offensive remarks about a person's sex. There has to be enough emphasis on the sensitization of sexual harassment at the workplace. In India, Article 21 of the Constitution ensures the "Right to life and personal liberty" of an individual, therefore when a person is victimized to sexual harassment his/her fundamental right is being violated. This paper tries to bring out various aspects of workplace sexual harassment.

1. Introduction

Sexual harassment can be described as a complex problem which is as well as universal in nature. It takes place throughout the world in multiple cultures and societies, for both adults and children. The involvement in any sexual activity is forced, or unwanted over a child or an adult victim for satisfying the sexual gratification of another is said to be sexual harassment. The explanations for

sexual harassment are varied; they depend on the sexual maturity, i.e. age of the victims. Sexual harassment can mean the following; 1. rape caused by a stranger 2. verbal compulsion to have sex with an intimate partner 3. men/women forced to have sexual intercourse when they are too intoxicated to consent or object. Sexual harassment by intimate partners and non-intimate partners are entirely two different phenomena. Thus, the risk factors involved in the two different sets of aspects are separate. Initially, one can identify sexual harassment with their gut instinct. Sexual harassment can be distinguished into two – namely; quid pro quo harassment and hostile work environment. The translation for quid pro quo is ‘this for that’. The quid pro quo situation arises when a person in authority demands sexual favours in return for a positive career. The authorities in order to escape any disciplinary action against them opt. subtle approaches towards their victims. A hostile work environment might take place when a colleague or any other person in authority negatively interferes with the work performance of the victim.

2. Review Of Literature

Hallberg & Strandmark (2006) the authors say that bullying at workplace profoundly affects the health of the victims, they also say that it psychologically throws the victim into a mental trauma leading them to guilt, shame and diminishing self-esteem.

Unnikrishnan et al., (2010) according to the author harassment is any act that is capable of causing humiliation to another person, it is also considered to be improper and unwelcome conduct of one person towards another. Women are subjected to face harassment from a young age more lightly when there is also the presence of a male child. The growing number of negative consequences increasingly leads to harassment in the workplace.

Kishore (2011), gender variance has subjected women to sexual harassment at the workplace. Factors such as women's inferior status in the society, lack of knowledge about the human resource departments, lack of proper law and order in the community, lack of provisions of the law in relation to the issue of workplace sexual harassment of women have given rise to workplace sexual harassment of women. In spite of the fact that the constitution of India guarantees and certifications each individual certain right yet such acts happen and such lewd behaviour disregards the essential intention of the designers of the constitution. Any demonstration of savagery in the work environment is rising as a national issue. This shows a vocation doesn't exist in a vacuum but instead show a more significant social setting. It is, in fact, the ladies, who should break the unreasonable impediment. Attention to the present circumstance and the craving to beat the snags presented by the general public, what's more, their selves alone would be a response to the social malevolence of provocation and savagery at the work environment.

Swarnalatha (2013) in every level of employment, both men and women are being affected by the issue of workplace sexual harassment. Reducing the risk of harassment and providing legal remedies in case of such harassment at the workplace is necessary. Employees need to be prevented from suicidal

tendencies. It is essential to stop the daily harm to which the employees are put through workplace harassment. The workplace environment is a vital factor for an organization which is also a contributing factor resulting in harassing atmosphere. Workplace harassment affects not only the organization's productivity or turnover but also the employee's job satisfaction.

Adebayo & Juliet (2014) students face detrimental effects when teachers are bullied in educational institutions. Thus, resulting in low morale among teachers. This situation in the educational institutions will adversely affect the productivity of the trained staff, and it will lead to poor qualities of student's results.

Lisa Fedina, Bethany L. Backes & Jennifer Lynne Holmes (2018) the authors talk about the misfortune where college students are highly victimized to sexual harassment while attending college. Higher rates of victimization are a trend that appears while examining the overall sexual harassment experiences versus an individual type of sexual harassment. In the article, the authors have highlighted the importance of interpreting rates of sexual harassment, including caution and also properly attribute it to the specific type of victimization.

3. Aim/Objective

- To identify workplace sexual harassment.
- To understand the various attributes of workplace sexual harassment.
- To establish the guidelines to overcome sexual harassment at the workplace.

4. Methodology

This article is done by secondary data referring to various research papers and web articles, which are mentioned in the references. This article uses analytical, critical, comparative and other necessary methods to deduce the conclusion.

5. Discussion

Identification Of Sexual Harassment At Workplace

Identification of sexual harassment remains to be a complicated task. Sometimes what one person feels is sexual harassment might not necessarily be sexual harassment. For instance, when a man passes a statement with respect to a woman which, according to him, is a pleasantry, and for her, it is a rude comment. To avoid misconception of a person's behaviour, it is essential that the victim talks to her perpetrator about her discomfort towards his comments before taking it to the HR representative or any other person in authority to address the issue. However, if a person repeatedly tries to make another to feel sexually uncomfortable, then it can probably be identified as sexual harassment. Passing sexual comments, unpleasant touch/stare, threatening or requesting to meet in private, etc.; are generally presumed to be the most common style of sexual harassment. But it is to be understood; there many other types of sexual harassment are likely to take place at work.

Attributes Of Workplace Sexual Harassment

The major causes of sexual harassment at the workplace are as follows;

- The offender's hunger for power.
- Lower wages/salaries, lower decision-making power, and lower status of the victims.
- The offender's sexual desire backed with the victim's vulnerability.

It is to be noted that women in leadership positions at work are likely to face higher risks of sexual harassment, as over and over, sexual harassment is for power and not sex. The women at the lower levels with minimum income are also at high risk. It was established that "2 in 5 women in the fast-food industry experience sexual harassment at work" by a study conducted by Hart Research. Women with lower income are hesitant towards reporting any sexual harassment faced by them in their work environment due to their fear of losing jobs. In a working environment, irrespective of a person's gender (i.e. both men and women) may experience sexual harassment. Still, women face a relatively higher risk than men due to inequality in pay, lower-authority and lower-status in their respective jobs. Similarly, women in power also may experience the issue of sexual harassment. Sometimes sexual harassment might take place in any workplace, so the purpose of reinforcing the traditional gender role which can be referred to as gender-based harassment.

Procedure To Report The Crime

Different organizations have different rules of procedure which are to be followed while reporting any crime concerning sexual harassment. And therefore, it is always best to follow the procedure prescribed by one's respected organization. However, a victim can always talk to their boss, the HR representative or the supervisor whoever they are comfortable with in order to organize a formal meeting to address the issue of sexual harassment that has been taking place in your workplace. Also, it is essential that the victim submits their claim in writing to any one of the people as mentioned above and it is necessary to have a copy of the letter with oneself as proof to show that the victim has taken the matter to the authorities in power. In legal grounds, the organization has to start an investigation against the perpetrator once a sexual harassment complaint has been made. The authorities cannot retaliate the issue yet if they do so, the victim is eligible to file a claim against the predator with the Equal Employment Opportunity Commission (EEOC). However, there is a deadline within which the victim has to report the crime to the EEOC. The crime must be reported within a period of 45 days. On reporting of the crime, if there is any personal action taken against the victim (e.g. dismissal), then the victim is entitled to contact the EEO counsellor, and the report can be filed against the respective person who acted against the victim. And this has to be carried out within 45 days from which the personal action against the victim takes effect. EEOC acts as a negotiating instrument between the employer and the victim and tries to resolve the issue. When EEOC fails to settle, then they issue a notice viz. "right to sue" this gives the victim the potential to file a complaint against the discriminator in the court of law, by which they are

entitled to receive damages for the physical and mental suffering, to which they were subjected. Thus, EEOC protects the victim against any retaliation.

Guidelines Formulated Against Sexual Harassment At Workplace

Vishaka Vs State of Rajasthan and Ors. is a landmark case viz. known for human rights violation and their standards, as the dignity of a person is threatened under the title of sexual harassment. The simple facts of the case display Bhanwari Devi an employee in Rajasthan State Government during the 1990s she tried to prevent the happening of child marriage as it was her duty being a worker at the women development programme. The landlords of the community raped Bhanwari Devi for performing her duty. Several other women groups were inspired to file a Writ Petition in the Hon'ble Supreme Court of India after the acquittal of the offenders in the case.

The case is a landmark judgement for sexual harassment the Supreme Court stated that “Every instant of sexual harassment is a violation of fundamental rights guaranteed under Articles 14,15 and 21 of the Constitution of India. It also amounts to a violation of ‘Right to Freedom’ under Article 19”.

The guidelines that need to be followed to overcome sexual harassment at the workplace are as follows;

i.Duty of Employer:

It is deemed to be an essential duty of the person in authority or the employers to prevent the commission of any act which will amount to sexual harassment in the work environment. It is also the employer’s duty to provide fundamental rules of procedure for the settlement, resolution or prosecution of the acts when committed.

ii.Preventive Steps:

The employers or every person who is in power in a respective workplace, be it public sector or private sector organization are entitled to take appropriate steps and measures to prevent and discourage sexual harassment. The people in power also must ensure that any women working in their respective organizations should not have any reason to feel hostile in their work environment. No women should feel disadvantaged with her employment or employer. The government, along with other private sectors, included rules and regulations prohibiting sexual harassment in their workplace and to keep a check on the conduct of a person at work. It also provided appropriate penalties which will be imposed on the offender when violated. Appropriate ways are to be adopted to notify, publish and circulate the express prohibition of sexual harassment.

iii.Criminal Proceedings:

The employer is entitled to initiate and take appropriate action against the offender commensurate with the legislation by way of making a complaint with the proper authority when the conduct or behaviour of a person amounts to an offence under the Indian Penal Code or any other law prescribed. The employer holds the liability of ensuring that proper measures are being adopted when any case of sexual harassment is being reported. The offender also has to face other disciplinary action put against him by the employer.

iv.Complaint Mechanism:

The employer is entitled to create an appropriate complaint mechanism for the purpose of redressal of the complaint, which will be put forth by the victim. Time-bound treatment for the allegations has to be ensured by the complaint mechanism that is created by the employer. The efficiency of the complaint mechanism should be to that level where they have adequate means to provide, wherever necessary, a special councillor, complaints committee or other special support services, which will also include confidentiality. The complaints committee has to have not less than half of its members to be women, and the director of the committee should also be a woman. Third-party involvement who may be any person from an NGO or any other person or body aware of the issue of sexual harassment is essential for a complaints committee. This involvement of a third party is to ensure that there is no undue influence or pressure from the senior levels to the complaints committee.

v. Third-Party Harassment:

The victim is entitled to receive all the necessary and reasonable assistance from the employer in terms of support and preventive actions when the issue of sexual harassment occurs as a result of the conduct of a third party.

A request was made to the Central and the State Governments to adopt adequate measures which include legislations to ensure that the guidelines prescribed were observed by the employers in the Private Sector as well.

6. Conclusion

Sexual harassment is a serious problem across all industrial sectors and workplaces (institutes such as educational, medical, banking, etc.) and this problem remains to be a more significant threat despite all the attention, legislations, research and awareness. It is a great misfortune that there is no industrial sector that remains unharmed by the issue of sexual harassment. The damages that sexual harassment is bound to cause are health, finance, opportunities at work, lack of career development, low morale, lack of productivity, etc. When any case of sexual harassment is being ignored by the organization, the victim, with the help of legislations, can punish the offender and the organization as well. Therefore, to overcome the problem of sexual harassment every institution under every industry has to lay down a clear and an effective employment policy which will ensure to keep a check on any such issue and will reduce the vulnerability of employees.

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