



Legal Provisions for Security of Women in Workplace

Om Prakash

Having regard to the definition of 'Human Rights' in Section 2 (D) of the Protection of Human Rights Act, 1993 and taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time, it is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

1. Duty of the Employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) Physical Contact and Advances;
- (b) A demand or request for sexual favours;
- (c) Sexually coloured remarks;

- (d) Showing pornography;
- (e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps: All employers or persons in charge of workplace whether in 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 workplace 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 towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. 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.

5. 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.

6. 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 redressal of the complaint made by the victim. Such complaint

mechanism should ensure time bound treatment of complaints.

7. Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor 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.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Worker's Initiative: Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. 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.

10. 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.



11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Other legal provisions include filing a criminal case under sections of the Indian Penal Code (IPC), the Indecent Representation of Women (Prohibition) Act and/or filing a civil suit.

The sections of the Indian Penal Code that can be applicable to sexual harassment (which makes it a criminal case):

1. Section 294 of IPC

‘Whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites and utters any obscene songs, ballads or words, in or near any public space, shall be punished with imprisonment of either description for a term that may extend to three months, or with fine, or with both. This provision is included in Chapter XVI entitled ‘Of Offences Affecting Public Health, Safety, Convenience and Morals’ and is Cognizable, Bailable and Trialable by any Magistrate.

2. Section 354 of IPC

Whoever assaults or uses criminal force on any woman, intending to outrage her modesty or knowing it likely that he will thereby outrage her modesty, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

3. Section 509 of IPC

(Word, gesture or act intended to insult the modesty of a woman) This is included in Chapter 22 entitled ‘Of Criminal Intimidation, Insult and Annoyance’, and is cognizable, bailable

and trialable by any magistrate. It holds: ‘Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture is seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.’

Under the Indecent Representation of Women (Prohibition) Act-1987 if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing the “Indecent Representation of Women”, they are liable for a minimum sentence of 2 years. Section 7 (Offences by Companies) further holds companies where there has been “indecent representation of women” (such as the display of pornography) on the premises, guilty of offenses under this act, with a minimum sentence of 2 years.

Civil case: A civil suit can be filed for damages under tort laws. That is, the basis for filing the case would be mental anguish, physical harassment, loss of social esteem, income and employment caused by the sexual harassment.

But in the meanwhile, apex court of India has convinced about more privilege to women in legislature is bother for society and many innocent families are collapsing due to abuse of dowry prevention law. Therefore, Supreme Court has directed to all State Governments for stop automatic arrests under dubious dowry law. So that, Supreme Court decision on dowry law a much needed course correction.

In this connection, Supreme Court recently on 2nd July 2014 said women were increasingly using the anti-dowry law to harass in-laws and restrained police from mechanically arresting the husband and his relatives on mere lodging of a complaint under Section 498-A



(husband or relative of husband of a woman subjecting her to cruelty) of the Indian Penal Code.

Citing very low conviction rate in such cases, it directed the state governments to instruct police “not to automatically arrest when a case under Section 498 (A) of IPC is registered but to satisfy themselves about the necessity for arrest under the parameters (Check List) provided under Section 41 (1) of (Cr.P.C)” Criminal Procedure Code.

According to Section 41 (1) of Cr.P.C (any police officer may without an order from a Magistrate and without a warrant, arrest any person) lays down following (9) point check list for police to weigh the need to arrest after examining the conduct of the accused, including possibility of his absconding :

- (a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned; or
- (b) Who has in his possession without lawful excuse the burden of proving which excuse shall lie on such person, any implement of house-breaking; or
- (c) Who has been proclaimed as an offender either under this code or by order of the State Government; or
- (d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) Who has been concerned in, or against whom a responsible complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) Who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356 of Cr.P.C; (The state government may, by notification, make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence by released convicts)or

(i) For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Expressing exasperation over rampant abuse of Section 498 (A), a division bench of Justices C.K. Prasad and P.C. Ghose said if police arrested the accused, the magistrate should weigh the preliminary evidence against the Section 41 (1) of Cr.P.C check-list before allowing further detention.



“The magistrate, while authorizing detention of the accused shall peruse the report furnished by the police officer in terms of Section 41 and only after recording its satisfaction, the magistrate will authorize detention,” the bench said :

It also said that this check-list for arrest and detention would apply to all offences, which are punished with a prison term less than 7 years. Punishment under Section 498 (A) is a maximum of three years but it had been made a cognizable and Non-Bailable offence, which made grant of bail to the accused a rarity in courts.

But the court singled out the dowry harassment cases as the most misused and abused provision, though the legislature had enacted it with the laudable object to prevent harassment of women in matrimonial homes.

Writing the judgment for the bench, Justice Prasad said there had been a phenomenal increase in dowry harassment cases in India in the last few years. “The fact that Section 498 (A) is a Cognizable and Non-Bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives”.

“The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested,” he said.

The bench quoted “Crime in India 2012 Statistics” published by National Crime Records Bureau to say that nearly 2 lakh people were arrested in India in 2012 under Section 498 (A), which was 9.4% more than in 2011.

“Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts those others and both married and unmarried sisters of the husbands were liberally

included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt,” it said :

“The rate of charge-sheeting in cases under Section 498 (A) is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal,” the bench said illustrating the abuse of Section 498 (A) as a tool to harass husband and his relatives.

Describing arrest as a humiliating experience apart from curtailing the freedom, the bench said police have not shed their colonial hangover despite six decades of independence and were still considered “as a tool of harassment, oppression, and surely not considered a friend of public”.

The need for caution in exercising the drastic power of arrest had been emphasized time and again by courts but has not yielded results; the court said and tasked the magistrates to check illegal arrests.

Bibliography:

1. The Code of Criminal Procedure-1898.
2. The Indian Penal Code-1860.
3. Supreme Court of India case in Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384).

Om Prakash, Qrs No: E/208, Unit-VIII, Near Kalyani Apartment, Bhubaneswar-12, E-mail ommpti@gmail.com.