

ANALYSIS OF PROVISION OF SEXUAL HARASSMENT AT WORKPLACE (CANADA & INDIA)

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ABSTRACT

Even after 74 years of Independence, the independence of women is still a matter of great concern. It does not matter from which strata of society or business a woman, she is faced with harassment everywhere, be it verbal or through actions. One of the growing concerns now a days is the increasing cases of Sexual Harassment women face at their workplace.

KEYWORDS: SEXUAL HARASSMENT, CANADA, INDIA.

INTRODUCTION

The Equal Employment Opportunity Commission (EEOC) has defined sexual harassment in its guidelines as: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- 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.”[1]

LEGISLATIVE PROVISIONS

INDIA

After a gap of nearly 16 years, The Sexual Harassment of Women at Workplace Act (Prevention, Prohibition and Redressal) in 2013 was passed following the Vishakha guidelines which were laid down in 1997. Under this Act, sexual harassment is considered to be a violation of a woman's fundamental right to equality, enshrined in Articles 14 and 15 and 21 of the Constitution of India. In addition to this, the Criminal Law (Amendment) Act, 2013 under Article 354A of Indian Penal Code, 1860 made Sexual Harassment an expressed offence.[2]

Industrial Employment (Standing Orders) Act, 1946 prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable. The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (Standing Orders Rules) prescribes a list of acts constituting 'misconduct' and specifically includes sexual harassment. The Model Standing orders not only define 'sexual harassment' in line with the definition under the Vishakha Judgement, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note the 'sexual harassment' is not limited to women under the Standing Orders Rules.[3]

Before 1997, women experiencing SHW had to lodge a complaint under Section 354 of the Indian Penal Code, 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.

CANADA

The 1981 amendments to the Ontario Human Rights Code contain provisions specifically prohibiting harassment based on sex.

“Sections 6(2) and 6(3) state:

6(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to a person.”

In Policy on preventing sexual and gender-based harassment of 2013, the OHRC recognized the severe impacts of sexual harassment have on working women and trans people. It results in reduction of employees' morale, decrease productivity and contribute to physical and emotional effects such as depression, anxiety and posttraumatic stress disorder. The United Nations' Declaration of the Elimination of Violence against Women states that sexual harassment is the form of violence against women. Sexual harassment and violence reflect negative attitudes about girls and women. Inappropriate sexual behavior (sexual jokes, innuendo and unwanted gestures of “affection”) often develops over time and, if left unchecked, may progress to more serious forms. Physical or sexual assault may be the culmination of ongoing acts of harassment. Bill C-65 is an act to amend the Canada Labor Code of which Part 1 enactment amends the Canada Labor Code which strengthen the existing framework for the prevention of harassment and violence, including sexual harassment and sexual violence, in the workplace.[4]

CONCLUSION

Even though there has been a lot of changes in the society for preventing sexual harassment in the workplace, it is still a long way to go. There are plethora of regulations and still there are lot of insecurities present in India. Even after the commencement of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, there still continues to be a lot of insecurity in the working atmosphere. The problem lies in the lack of effective execution of the legislation in the country. After comparing the legislations of Canada and India it can be said that the problem is omnipresent and hence society needs to be sanitized from this evil.

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