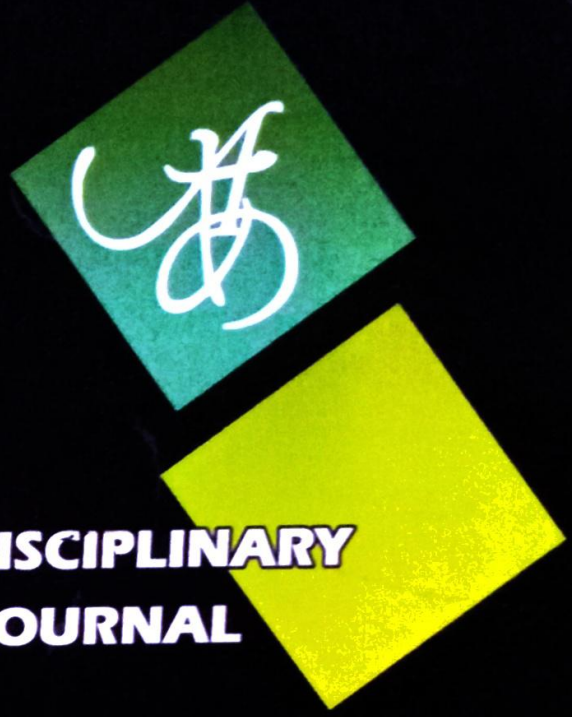




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M.Sc (Math's), M.B.A. (Mkt), M.B.A (H.R),
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CONTENTS OF ENGLISH PART - II



Sr. No.	Name & Author Name	Page No.
1	Dr. B. R. Ambedkar's thought about Parlimintary Democracy Dr. Rahul Baliram Pandit	1-5
2	Pink and Parched: Two Sides of the Same Coin Pooja Vasanth Wagh	6-8
3	Environmental Ethics: Ancient Trend in India Dr. Gopal G. Panchal	9-13
4	India at the 2018 Asian Games: A Study D. S. Viegas	14-17
5	Role of Education and Family in the Construction of Gender Identity among Secondary and Higher School Children Muntajeb Ali Baig	18-24
6	Impact of Batteries on Environment Miss. Vandana Daga Shewale	25-27
7	Impact of Mobile Phones on Commerce Students of Chalisgaon College Prof. M. V. Bildikar	28-31
8	Financial Management Practices of Small and Medium Enterprises (A Select Study with References to Guntur and Krishna Districts) N. Janardhana Rao Dr. N. Kishore Babu	32-41
9	A Study on Foreign Direct Investment Policy and Need of FDI in Indian Railways Sajjad Ahmad Parry	42-50
10	Effect of Eccentric Contraction Exercise Training on Abdomen Static Strength of State Level Gymnast Rahul V. Shriramwar Dr. Vishal Deshpande	51-54

CONTENTS OF ENGLISH PART - II

Sr. No.	Name & Author Name	Page No.
11	To Check Present Status of Wellness those who Regularly Engaged in Physical Activity Mr. Dattaprasad Manohar Sontakke Dr. B. N. Gapat	55-58
12	A Study on Human Resource Management Policies and Practices with Reference to Apsrtc Prof. B. Venkataratnam Kannamalla Sudha	59-66
13	Performance Evaluation of Mutual Funds - A Study on open Ended Schemes in India Dr. Ch. Srinivas Gunda Srinivas	67-75
14	Sexual Harassment of Women at Workplace - A Legal Study Asst. Prof. Umesh U. Katekar	76-81
15	Chetan Bhagat's The 3 Mistakes of My Life: A Message of Brotherhood and Humanity Dr. Kailas S. Patil Vivek D. Pise	82-90
16	Attitude and Behavior Intention of People towards Mobile Advertising Dr. Lokesh Jindal	91-99
17	Autobiographical Touch in the Writing of Kamala Das Sanjay Kumar	100-106
18	Recent Trends and Techniques in English Language Teaching Tiwari Bhuvanchand Damodar	107-115
19	Victimization of Women: With Particular Reference to Bapsi Sidhwa's Novels... Nitin K. Deshmukh	116-122

**CONTENTS OF ENGLISH PART - II**

Sr. No.	Name & Author Name	Page No.
20	Heroic Woman: Sultan Razia (1236-1240) Dr. Archana R. Bansod	123-129
21	A Comparative Evaluation of Illumination Normalization Techniques for Robust Face Recognition Manisha O. Sharma	130-137
22	Reserch in Distance Education: An Overview Neha Mishra Dr. Anil Kumar Panda	138-143
23	Development of Multimodal Biometric System by Using Iris and Face Dr. Rupali L. Telgad	144-152
24	Worker's Participation in Management Chatrasing Dhadekar	153-158
25	The Classication of Music Dr. Prachi S. Halgaonkar	159-166

14. Sexual Harassment of Women at Workplace - A Legal Study

Asst. Prof. Umesh U. Katekar
Dayanand College of Law, Latur.

Preface

In this modern era, the women are not lagging behind. They have been consistently showing their intelligence, keen interest and potential in various sectors. They have entered in working outside the family at different avenues such as white collar occupations, professions, public or private sectors and industries. But the alarming question is, whether they are safe? The ever rising crimes against women underline that, they are not safe. Though Indian constitution guarantees equality before the law and equal protection of laws, non-discrimination on the ground of sex, equality of opportunity etc., the position of women in India, presently, is not satisfactory. Currently, on daily basis, we come across number of incidents against the women which are very serious in nature. In this work, the researcher is trying to highlight the current status of working women in the eyes of law and to glance at the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 i.e. the POSH Act, 2013.

Sexual Harassment – The Concept

Harassment constitutes one of the basic violations of an individual's rights. 'Sexual Harassment' is an ambiguous term. While a sly touch, a suggestive gesture, or a lustful leer may be taken as sexual harassment for one woman, it may not be so for another, who may, feel flattered at the attention showered on her. It is not a woman's issue alone – it is a social issue having wide-ranging implications. Sexual harassment in India is termed as "Eve Teasing". The critical factor is the unwelcomeness of the behavior, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. According to Indian Constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 and her right to life and live with dignity under Article 21. Apart from, Article 14 and 21, Article 15 prohibits discrimination on grounds of religion, race, cast, sex, or place of birth. Article 32 gives right to constitutional remedies, Article 42 provides for just and humane conditions of work and maternity relief. Article 51A (e) of the Constitution obliges every citizen to renounce practices derogatory to women, are relevant.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, u/s 2(n) defines 'Sexual Harassment' to include unwelcome sexually tinted behaviour, whether directly or by implication, such as:

1. Physical contact and advances;
2. Demand or request for sexual favors;
3. Making sexually colored remarks;
4. Showing pornography; or
5. Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature,

The Act also states that the following circumstances (whether implied or explicit), inter alia, and may constitute sexual harassment:

1. Promise of preferential treatment in employment;
2. Threat of detrimental treatment in employment;
3. Creating an intimidating or offensive or hostile work environment;
4. Humiliating treatment potentially endangering health or safety; or
5. Implied or explicit threat about present or future employment status.

This definition clearly shows that the expression "sexual harassment" includes physical verbal or even a written conduct. What is important is that, the conduct is unwanted and unwelcome by the recipient. It is subjective and very wide definition. What constitutes 'sexual harassment' depends upon the specific facts and the context in which the conduct has been occurred.

The working class women are exposed to the world outside the family; they are prone to the various crimes. There are instances that these women, on their way to workplace and even in the offices are victimized. The media visualizes that women workers starting from social welfare worker cadre to IAS Officer Cadre, are criminally exploited.

Indian Laws to Deal with Sexual Harassment of Women

If the harassment or assault has occurred at a public place or at home, a police complaint should be filed. The Indian Penal Code, 1860 provides following important sections in this connection –

a) For performing obscene acts and songs in a public place (Section 294)

This section is applicable if the accused does any obscene act in any public place or utters any obscene song or words in or near a public place and thereby causes annoyance to others. The punishment is imprisonment of up to 3 months, a monetary fine, or both.

b) For an acid attack (S. 326-A) and for attempting to throw acid (Section 326-B)

A person who causes damage, deformity, burns, grievous hurt or who maims, disfigures or disables any part the body of another person by throwing, administering or otherwise using acid on such other person with the intention or knowledge that the is likely to cause such injury or hurt, shall be punished with imprisonment for a term which shall not be less than 10 years and extendable to imprisonment for life, and with fine. An attempt to commit an acid attack is punishable with an imprisonment of a term not less than 5 years which may be extendable to 7 years along with fine.

c) For assaulting or using criminal force on a woman with intent to outrage her modesty (Section 354)

If the accused uses the criminal force on any woman, intending to outrage or knowing it to be likely that such act will outrage her modesty, he shall be punished with imprisonment of up to 2 years, or with fine, or with both.

d) For sexual harassment (Section 354 A)

If the accused, being a man, commits any of the following acts against a woman –

- i) Physical contact and advances involving unwelcome and explicit sexual over tones; or
- ii) A demand or request for sexual favors; or
- iii) Showing pornography against the will of a woman; or
- iv) Making sexually coloured remarks, he shall be guilty of the offence of sexual harassment. The punishment is imprisonment of up to 1 year, a monetary fine or with both.

e) For acting with intent to disrobe a woman (Section 354 B)

A man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked shall be punished with imprisonment for a minimum term of 3 years which is extendable to 7 years along with the fine.

f) For voyeurism (Section 354C)

A man is guilty of voyeurism if he watches, or captures the image of a woman engaging in a private act in circumstances where she would usually has expectation of not being observed, or if he disseminates such image. Moreover, in case where the survivor consents to the capture of the images or any act – but not to their distribution to third persons and where such image or act is disseminated; such dissemination is considered an offence under this section. On the first conviction, the punishment is imprisonment for a minimum term of 1 year which is extendable to 3 years and also fine. For second or subsequent conviction, the punishment is imprisonment for a minimum term of 3 years which is extendable to 7 years, and also liable to fine.

g) For stalking (Section 354 D)

A man who –

- i) Follows a woman and contacts (or attempts to contact) such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- ii) Monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking. However, this provision certain behavior are exempted from stalking such as stalking to prevent or detect crime etc. On the first conviction, the punishment is imprisonment for up to 3 years and also a fine. For second or subsequent conviction, the punishment is imprisonment for up to 5 years and also a fine.

h) For rape (Section 376)

The punishment for rape is a minimum imprisonment of 7 years (which can extend to a life term) and a monetary fine. A convict of marital rape can be punished with the imprisonment of up to 2 years or with a monetary fine or both. In case of rape by a public servant in abuse of his duty, rape of a pregnant woman, rape of a woman under 12 years of age and gang rape, punishment is a minimum imprisonment of 7 years which is extendable to a life term and fine

i) For uttering any word or making any gesture intended to insult the modesty of a woman (Section 509)

If the accused 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 or object shall be seen, by the survivor, or intrudes upon the privacy of the survivor, he shall be punished with imprisonment of up to 1 year, or with fine, or with both.

The Prohibition of Sexual Harassment of Women at Workplace Act, 2013 (The Posh Act, 2013)

The Prohibition of Sexual Harassment of Women at Workplace Act, 2013 i.e. the Posh Act, 2013 is the first specific legislation aiming to protect women from sexual harassment at their workplace and also for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. It was enacted by the Indian Parliament on 22nd April 2013 which came into force from 9th Dec 2013.

In the case of *Vishakha V. State of Rajasthan (AIR 1997SC3011)*, the Supreme Court issued detailed guidelines for employers in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. In this case, the court dealt with the issue of gang rape of *Bhanwari Devi*, a social worker devoted for the

cause of opposing child marriages. Besides the issuance of guidelines, the position of women at workplace remained unsatisfactory. That's why there was a need of a specific legislation to deal with this issue and hence the enactment of the legislation.

If a woman is subjected to sexual harassment at the workplace, the POSH Act provides relief. Following are some of the important features of this Act -

- a. This Act protects all women, irrespective of age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.
- b. It is mandatory to set up an Internal Complaints Committee at each office or branch with 10 or more employees, to investigate all complaints of sexual harassment by workplaces, educational institutions and hospitals. If such a Committee is not set up, the business may be punished with a fine of up to Rs. 50,000. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business. The government is in turn required to set up a "Local Complaints Committee" at the district level to investigate complaints regarding sexual harassment from establishments where the Internal Complaints Committee has not been established. These Committees are empowered to grant interim relief by way of transfer of victim women or respondent to any other workplace; or grant of leave up to 3 months to victim woman along with her regular leaves.
- c. A case can be filed before the Internal Complaints Committee by the surveyor, her relative, friend, or by any person who had the knowledge of the incident and who had written permission of the survivor to make complaint.
- d. The complaint should contain a description of each incident with the relevant dates, timings, locations, and the name of the accused (if known).
- e. The enquiry process is confidential and a person who breaches confidentiality has to pay a penalty of Rs. 5,000.
- f. The Committee is required to complete the inquiry within a time period of 90 days. After completion of the inquiry, a report will be prepared and acted upon within 60 days.

In nutshell, the effect of the POSH Act is threefold as –

- I) It prevents a hostile work environment.
- II) It understands and copes with the unwelcome behavior and
- III) All the woman has to prove that the treat was made to at the first place i.e. quid pro quo harassment.

Conclusion

On the basis of forgoing discussion, we may say that, no doubt, sexual harassment of women at the workplace is one of the most outrageous and serious crimes. There are certain legislations such as Indian Constitution, Indian Penal Code, Posh Act etc. to cope up with this evil. The women should not fear to complain of such cases to proper authorities. The people should also change their mentality of treating the women as commodity. Again immediate psychological and legal counseling, stress management therapy, cognitive behavioural therapy, support from family, friends and society to the victims may be suggested. And at last, the effective implementation of the abovementioned legislations is needed.

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