

The status of women under Indian Laws and sexual harassment at workplace

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Abstract: *Women in India had emerged victorious from a long drawn battle of gender justice and equality. Though the Indian Constitution had vehemently opposed discrimination on the basis of gender yet it existed and still does in various forms in various places. This paper makes an attempt to study the discriminatory behaviour against women and as a consequence law had to come to the rescue of women. As a result, we have specific sections relating to women under the Indian Penal Code, apart from certain enactments which are specifically made for their welfare. We know enough about the domestic violence and dowry prohibition, crimes that take place within the homes, however today women contribute a major workforce in India. What is the status of women the sexual harassment of women at workplace act? This paper aims to study the same. How safe are our women at their workplace and is the right to profession contradicting their right to live with dignity?*

Key Words: *sexual harassment, gender justice, Indian penal code, tort, women empowerment, social transformation*

1. INTRODUCTION:

There is no society which is free from crime. The more developed a society becomes the more there is a rise in number of crimes. But, an important question is which type of society is facing what kind of crimes? For example, in India, the more we boast that we have attained gender equality and our women are now empowered, we see a considerable rise in heinous crimes against women. There have been various factors which can be held responsible for the constant rise in the crimes against women in the society. Mobility, inter-mingling of various populations, cross cultural conflicts, family backgrounds, political ideologies, religion, economic conditions, media are the multiple factors which act as a catalyst in the commission of crimes against women. Over the period of time crime in India has witnessed a considerable rise in crimes against women. The above mentioned factors have contributed much to the causation of such crimes. Not only there is a constant rise in crime against women but also the crimes are heinous and of barbarous nature.

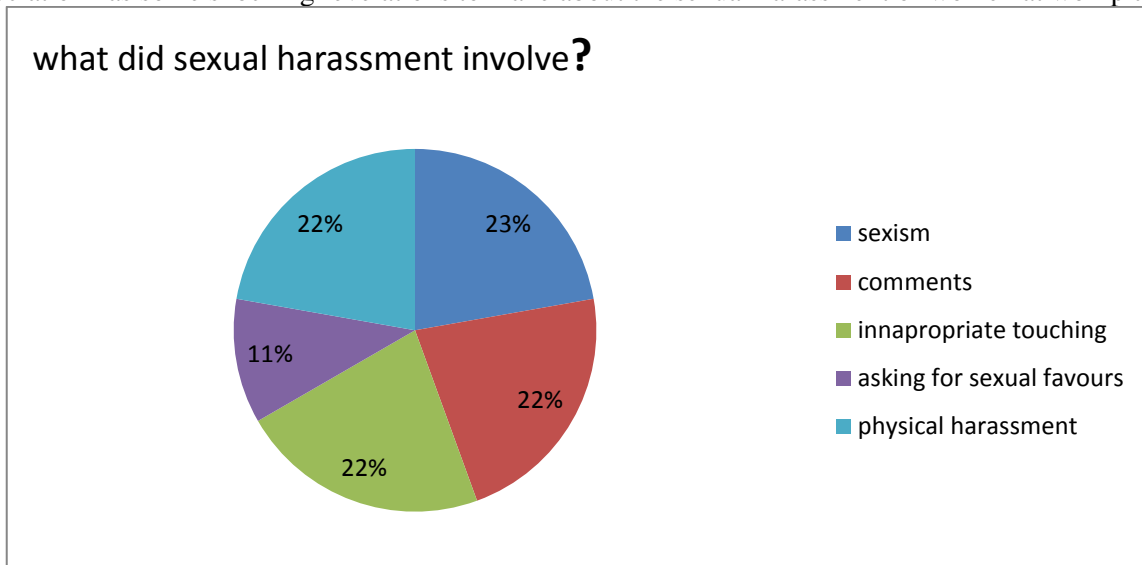
Women, if we consider have become more empowered or more vulnerable to crimes as we are moving ahead. Also, not only there is a constantly increase in the rate of crime against women, the nature of the crimes that are committed against them are heart wrenching. Further, rather than punishing the guilty we see the same types of crimes are repeated simply because the machinery is not conscious enough to suppress the crime, the moment they are committed.

Again as mentioned above the trend of the society towards its women, and because of the fear of social stigma often women do not report the crimes committed against them. In cases where they are reported, it is hard to file a complaint with the police initially because of the attitude of the police and the resistance they offer in registering such complaints.

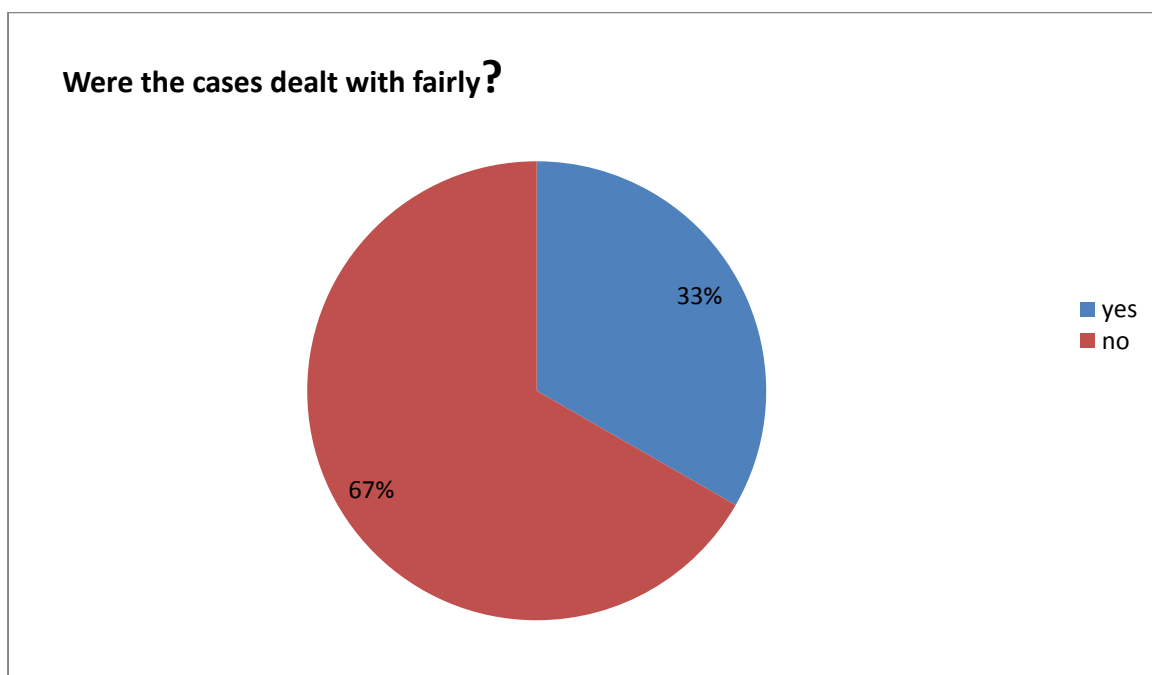
We address sexual harassment of women at workplace as a crime, but before we proceed further it is essential for us to understand what is crime? What are the elements which when put together result in a crime? If we consider the thoughts of Blackstone and Stephen, we find that they lay stress and suggest that crime is nothing but a breach of a law which injures the society. It hurts the moral sentiments of the society. Considering crime as a phenomenon which affects the society at large, Raffeale Garafalo has given a sociological definition of crime. According to him crime is an act which offends the basic sentiments of pity. Hence, we can say that crime is an act which ultimately results in social disorganisation and owing to its nature it is disregarded by the society at large. Each society has a set pattern of norms, customs, traditions, which it follows consistently and obediently. Over the period of time the continuous observance of these customs, norms and traditions become a set of rules and principles and any deviation from them is disregarded by the society. Strict adherence to them is expected from all the persons who are a part of that society and if anyone commits any act which goes against the set patterns injures the society morally. In the years gone by where there were no express legislation, the acts of the persons were governed by these norms of the society and hence accordingly the people classified the acts as offences or crimes and the punishments were also given according to the

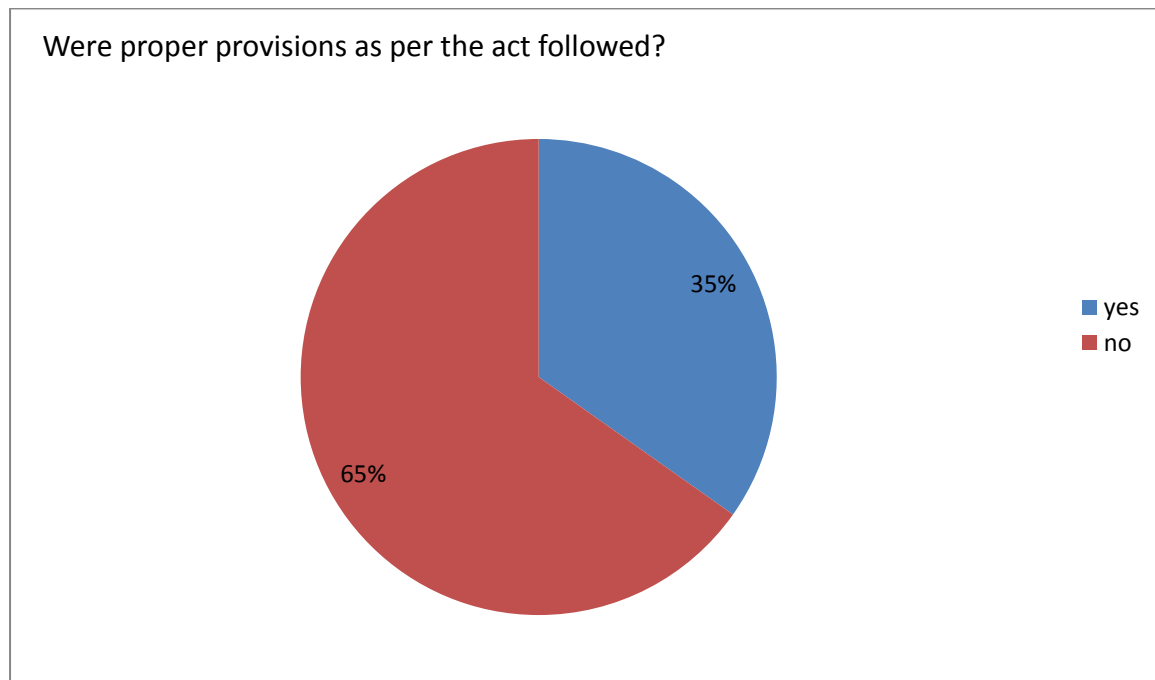
common decision of the society. However, with the passage of time and the British rule in India, the sociological definition and criteria of crime of not acceptable and comprehensive and elaborate legislations were made which expressly defined the acts which were considered as crimes and the punishments thereof.

When we talk about the crime of sexual harassment of women at workplace, until the case of Vishaka, we did not have appropriate laws on the subject and it was only recognized as a facet of certain fundamental rights. Again, the case of Vishaka finally compelled the courts to act as interim legislature and issue guidelines, which were to be followed unless we had a comprehensive law on the subject. These guidelines were issued in the year 1997 and finally a law was enacted for the protection of women from sexual harassment at their workplaces. The irony is, that despite there has been a constant rise in crimes against women, and considering the past history of discrimination and harassment of women it took a considerable number of years for the Indian Parliament to enact a law. this enactment contained detailed provision regarding prevention of the same. It defined the acts that constituted sexual harassment at workplace, the formation and constitution of complaints committee, redressal mechanism, training of the workers to name some. However, even after considerable years of passing of the enactment the survey conducted by the Indian Bas Association has some shocking revelations to make about the sexual harassment of women at workplace.[1]



The survey was conducted on the people from various sectors. The majority of the women revealed that they did not instantly complained about sexual harassment because of embarrassment, due to fear, lack of confidence, complaints mechanism, unawareness and the social stigma attached to it. While 60% of the women stated that it took six months for them to file a complaint, 11.1% said they took six to twelve months and lastly 28.9% of women said that it took twelve months and above for them to file the complaint.





The survey shows us clearly that though the government made it honest effort in preventing sexual harassment at workplace but it lacked behind when we talk about its effective implementation. The constitution of the internal complaints committee and the redressal mechanism has been a complete failure when it comes to providing a healthy atmosphere. Hence, sexual harassment still prevails and still a lot has to be done to curb this evil and grant equality.

2. WOMEN AND THE INDIAN PENAL CODE:

Now, the question remains how were crimes against women were dealt with even before the guidelines in the case of Vishaka were issued? The question of sexual harassment was brought to the notice of the nation at large in the case of Vishaka, but if we move back and think, how and where and under which law, crimes against women would be dealt with? The answer is the Indian Penal Code. However it is noticeable that there were no specific provisions or a chapter on crimes against women in the Indian Penal Code as well. Crimes like sexual harassment were dealt with under sections 354 and 509. However, in the year 2013, even Indian Penal Code was amended to include certain crimes against women and specifically acknowledge them. With the enactment of the Criminal Law (Amendment) Act, 2013, a new penal provision, section 354A IPC, has been added defining sexual harassment essentially in terms of the definition of that expression by the Supreme Court in the Vishaka case. Now, let us first consider sections 354 and 509 before we take a peep into the amendment.

Section 354 talks about assault or criminal force to women with intent of outraging her modesty. It further reads as following ‘whosoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty (shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine). In the case of *Mrs Rupan Deol Bajaj v. Kanwar Pal Singh Gill*¹ the Supreme Court has made an attempt to define modesty. It stated that ‘the ultimate test for ascertaining whether modesty has been outraged is that the action of the offender could be perceived as one which is capable of shocking the sense of decency of a woman.’”

In the year in the case of *Aman Kumar v. State of Haryana*² the Supreme Court has defined in details as to what amounts to be an offence under this section. The courts stated that “essential ingredients of the offence punishable under section 354 IPC are that the person assaulted must be woman, and the accused must have used criminal force on her intending thereby to outrage her modesty. What constitutes an outrage to female modesty is nowhere defined. The essence of a women’s modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her dress coupled with a request for sexual favour is such as would be an outrage to modesty of a woman and knowledge that any deliberate intention having such outrage alone for its object.”

Section 509 talks about words, gestures or act intended to insult the modesty of woman. It further reads as “whoever intending to insult the modesty of any woman, utters any word or makes any sound or gesture or exhibits

¹ 1995 6 SCC 286

² 2004 4 SCC 379

any object intending that such word or sound shall be heard or that such gesture or object shall be 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 three years and also with fine.)

The following acts have been held by different courts to be covered by section 509:

Sending a letter containing indecent propositions to a woman comes within the word 'gesture' which refers not merely to body signs but also conveying his attitude.

Following a woman in a public transport such as bus, tram or local train, laughing and grinning at her, standing in her way or shouting her name aloud

Creating any undue obstruction or causing inconvenience in her public life.

Entering into a woman's workplace with the intention to commit an offence or intimidate, assault or annoy her, which would not only be covered under the above mentioned section but may also amount to criminal trespass.

Apart from these two sections the IPC was amended in the year 2013 and section 354 was consequently amended to include certain crimes of different nature which were now being repeatedly committed against women.

Foremost comes section 354A, which talks about sexual harassment. It states that

1. A man committing any of the following acts
 - I. Physical contact and advances involving unwelcome and explicit sexual overtures; or
 - II. A demand or request for sexual favours; or
 - III. Showing pornography against the will of the woman; or
 - IV. Making sexually coloured remarks,

Shall be guilty of the offence of sexual harassment.

2. Any man who commits the offences specified in the above mentioned sub-section shall be punished with rigorous imprisonment for a term which may extend to three years or with fine with both.

Section 354B talks about assault or use of criminal force to woman with intent to disrobe – any man assaults or uses criminal force to any woman or bets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of wither description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Section 354C; Voyeurism- any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image. Private act for the purpose of this section means an act of watching carried out in a place which in the circumstances would reasonably be expected to provide privacy.

Section 354D, talks about Stalking, a very common crime which is very frequently committed against woman and girls. It states that any man who 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 monitors the use by a woman of the internet, email or any other form of electronic communication.

Apart from the above mentioned sections of the Indian Penal Code, we may also consider section 292 and 294 which are regarding obscenity while considering sexual harassment of women at workplace. These sections are related to selling of obscene books and objects and doing obscene acts in public places. These activities are offences under the aforementioned provisions and it is possible that they may also qualify as sexual harassment under clause iii and iv of section 354A.

Thus, prior to the enactment of these amendments and the specific law on sexual harassment of women at workplace, the crimes against women were dealt with limited sections of the IPC. But, again on various occasions and cases, the courts were compelled to expand their views while dealing with such cases where there was no comprehensive law. Though, the courts relied much on the international conventions while dealing with such cases, but it should be remembered that the status of women, crimes against women, the involvements of women in different fields are different in each country. Hence, each country despite the international conventions and treaties needs its own municipal laws which would and should be enacted according to the conditions prevalent in the society.

A glaring example of this was the problem faced by the judiciary while dealing with the case of Bhawari Devi. Though the Supreme Court issued intensive guidelines which were to be followed and implemented all over India, but in vain. These guidelines failed to bring the desired result or any relief to the working woman because of its poor implementation and awareness. Consequently, when the courts learnt from the repeated crimes against woman and which the machinery failed to combat it had to enact a whole new comprehensive new law and as a result the Indian Penal Code was also amended recognizing certain new acts as crimes against women. It was necessary to amend the Indian Penal Code, as there was not only an increase in the number of crimes against woman but what the society now faced were a completely different nature of crimes against woman. In order not to repeat its mistake of issuing guidelines, which were repeatedly breached, certain new acts were added this time by amending the penal laws and which were now expressly recognized as offences against woman. This was yet another humble effort of the

lawmakers to include all those acts which were being repeatedly being committed against the women in the society and thus curbing the freedom and dignity of the Indian women.

The latest NCRB data for the year 2016 shows that while overall crimes against women have risen by just about 3%, incidents of rape have gone up by 12%. While 2015 saw the registration of 34,651 cases of rape, this increased to 38,947 in 2016. Conversely, overall crimes against women rose from 3,29,243 in 2015 to 3,38,954 in 2016.

The majority of cases categorised as crimes against women were reported under 'Cruelty by husband or his relatives' (32.6%), followed by 'Assault on woman with intent to outrage her modesty' (25%), 'Kidnapping and abduction of women' (19%) and 'Rape' (11.5%).[2]

3. WOMEN UNDER LAW OF TORTS

Victims of sexual harassment can have recourse to tort law in a significant number of countries. In India however, the scenario is different. It does not provide appropriate remedy to the victims of sexual harassment. Indian tort jurisprudence is very much underdeveloped. The damages under the law of tort in India can be awarded for mental pain and suffering, indignity, distress. However, emotional distress per se without physical harm is not actionable. In the case of *Saheli v. Commissioner of Police*³ it has been held that 'an action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solarium for the mental pain, distress indignity, loss of liberty and death.'

In these jurisdictions, their treatment constitutes a civil wrong for which they can be granted a remedy, usually in the form of damages. Where no specific provisions exist, the only available form of redress is often the interpretation of existing torts, such as personal injury, assault and battery, or defamation, to extend to incidences of sexual harassment. Through this approach, tort law is potentially applicable in most countries. In some, it is the primary mechanism through which victims can seek legal redress. In Japan, for example, since the equality legislation specifically prohibiting sexual harassment does not permit individuals to initiate legal claims, tort law is still widely used. If an act of sexual harassment infringes on certain "personal rights" guaranteed by the Civil Code (the right to self-determination in sexual matters, to personal dignity and to sexual freedom), it is a tort for which the victim must be compensated.

Under English law most claims are brought under the Equality Act, 2010.

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4. SEXUAL HARASSMENT AND LABOUR LAW:

Labour law in India is applicable to all the industries whether they are private or public sector. Women in India contribute to a significant labour force in India. Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) act, 2013 provides that a women worker employed in an industry and subjected to sexual harassment is entitled to complain under the Industrial Disputes Act, 1947 or under the act of 2013. Section 9 runs as following:

Any aggrieved woman may make, in writing a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of last incident

Provided that where such complaint cannot be made in writing, the Presiding Officer or any member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the women for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

Sub-section 2 provides that where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Hence the women of various industries are also covered under the act in order to protect them from sexual harassment and provide a safe and conducive working atmosphere.

The Act on sexual harassment will be applicable to the Industrial Disputes act only under some specific circumstances. In order for its applicability under the Industrial Dispute Act, the specific conditions that prevail must be as following:

- The place of work where sexual harassment occurred must be an industry

³ 1990 1 SCC 422

- The person with whom sexual harassment has been committed must be a workmen or a person in whose employment or non-employment or conditions of service the workmen/employers are interested
- The problem must be an Industrial Dispute.

Now before we proceed further it is essential for us to understand the meaning of the term industry. In the case of *Banglore Water Supply and Sewerage Board v. A. Rajappa*⁴ the court has given a vast definition of the term industry under section 2(j). In the same case the court has recognized the following to be an industry or not?

The following were recognised as industry

- Club
- Hospital
- Municipal Corporation
- Horticulture Department
- Welfare Department
- Telecom Department
- Forest Department
- Educational Department
- Charitable Department
- Religious Institution
- Salons
- Irrigation projects
- Railways
- Yoga Centres

While on the other hand the following were not held as an industry

- Lawyers
- Chartered Accountants
- Agricultural operations
- Village Panchayats
- Defence Labouratory
- State Relief Work

Thus, if in any of the above recognized industry an act of sexual harassment is committed the workman has full right to complaint to the complaints mechanism. For the purpose of this act workman includes the following persons:⁵

- A person employed in the industry
- Such person must be engaged in performing manual, unskilled, skilled, technical, operational, clerical or supervisory work
- It also includes any persons dismissed, discharged or retrenched in connection with or as a result of an industrial dispute

Section 2(k) talks about the definition of Industrial Dispute as under

There must exist a dispute and such dispute must be between

Employer and employer

Employer and workman

Workman and workman

And such dispute must be related to

Employment and non-employment of any person

The terms of employment

The conditions of labour of any person

Certain examples of industrial disputes can be cited as under:

- Closure
- Employment to contract labour
- Alteration of conditions of service
- Working hours
- Assignment of different duty
- Regularisation

⁴ 1978 2 SCC 213

⁵ Section 2(s) of the Industrial Dispute Act

- Equal pay for equal work
- Overtime
- Pension
- Bonus
- Disciplinary action
- Pay enhancement

Though, we have a specific law now on sexual harassment but a major question arise that can an industrial dispute be raised on sexual harassment. How are the two laws, one On Industrial Dispute and the other on sexual harassment be combined? Just as the sexual harassment act defines certain acts to be counted as sexual harassment similarly the Industrial Disputes Act, incorporates certain unfair labour practices. The unfair labour practices according to section 2 (ra) are as following:

- To interfere with, restrain from, or coerce workmen in the exercise of their right to engage in concentrated activity for the purpose of collective bargaining or other mutual aid or protection;
- To discharge or dismiss workmen by way of victimisation or as in good faith or for patently false reasons, on penalty trumped up charges, or in utter disregard of the principles of natural justice in the conduct of a domestic enquiry;
- To transfer a workman mala fide from one place to another, under the guide of management policy
- To show favouritism
- To indulge in violence

Applying these principles in the context of sexual harassment the following acts may constitute unfair practices:

- If the management tries to restrain or coerce or interfere in an employee's efforts to assist in a case of sexual harassment at workplace
- If the management discharges or dismisses a employee for complaining against sexual harassment
- If the management transfers an employee for complaining against sexual harassment under the guise of management policy
- If the management favours or shelters a perpetrator of sexual harassment at workplace
- If the management fails to take appropriate preventive and protective actions against sexual harassment.

Commenting upon the implementation of the act on sexual harassment and preventing it the Supreme Court has made it very clear that the employer or other responsible person is duty bound to deter the acts of sexual harassment. Hence, the employers and the responsible persons in no case can avoid the implementation of the act for if they do not directly imbibe the new act they ought to amend their service rules to incorporate sexual harassment as an offence and to make appropriate laws and rules to prevent the same and deter it.

5. CONCLUSION:

Harassment of women and discrimination against them exists in one form or the other, even today. Enacting a plethora of laws does not serve the purpose of curbing the violence against them. Enactment of laws on every occasion does not guarantee a healthy atmosphere for our women and equality. However, what needs to be remembered is that how far have we been successful in implementing this law? Often the complaints of sexual harassment go un attended and unreported because of the fear of losing the job or hostile work environment. Thus, it is recommended that regular trainings, interactive sessions among the employers and employees and brain mapping should be done. Mere enactment of laws in no way serves the purpose, what remains is its effective implementation.

REFERENCES:

Books

1. Jaisingh, Indira (2015) Sexual Harassment of Women at Workplace, Universal Law Publications
2. Mill, J.S (2008) On Liberty and other writings, Cambridge University Press
3. Mody, Zia (2013) 10 Judgements that changed India, Penguin Random House India
4. Rao, Mamta (2013) Constitutional law, Eastern Book Company

Web references

- www.ncrb.gov.in/data 2016
- <http://mospi.nic.in/publication/women-and-men-india-2016>
- <http://www.livelaw.in/sexual-harassment-women-workplace-india-reflections-private-sector-part-ii/>