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Development Of Posh Act 2013 And Posh During Covid-19

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Abstract

Sexual harassment of women at workplace is neither new nor a rare issue, yet it is not reported or even talked about enough. By looking at present scenario women at their workplace are more prone to this violence because of the nature of their jobs which involves high interaction with their colleagues. India, on this issue, is a late entrant in formalising sexual harassment as a penal punishable offence. In 1997 S.C. through Vishakha V. State of Rajasthan held that sexual harassment of women is violation of two utmost fundamental rights guaranteed by Articles 14, 19 and 21 of the Indian Constitution. Later on India finally enacted its laws on prevention of such harassment as “The Protection of Women Against Sexual Harassment at Workplace Bill, 2010” and “Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 by which government intended to put a break on such sexual harassment of women and Criminal Law (Amendment) Act, 2013” which included section 354A IPC, 1860 that define sexual harassment and prescribed a penalty of 3 years imprisonment with or without fine. But recent data generated by government indicates that there has been a raise in sexual harassment and a number of complaints relating to it at work place have seen an upsurge. This paper is therefore an attempt to explain the sexual harassment in current scenario with its legal status and how organizations can help in maintaining the dignity of a woman.

Keywords: Sexual Harassment, Right to life and personal liberty, Women Protection, Amendment Act, 2013.

Introduction :

“Our lives begin to end the day we become silent about things that matter.” -Martin Luther

King, jr

A woman is the mother of the race and the future of all generations. Women constitute one half of the humanity and they are the pivots around which the family moves. She's looked upon as the nourisher, provider, counsellor, developer, and the sharer of all the joys and surrounds of the family.

Violence against women in India is a very common phenomenon since ages, particularly in Mughal era. However, in British era Indian women were provided some safeguards and violence against women decreased. In spite of this the overall dignity of Indian women was not up to the mark after the freedom of India. Therefore, the government of India framed a Dowry Prohibition Act, 1961 and also ensured such other special provisions in the Indian Penal Code (IPC). These provisions gave a safeguard to household women but working women were not given due importance in the many Acts laid down by Indian parliament from time to time. Consequently the working women felt unsafe at the workplaces and many cases were registered against the employers. Ultimately to empower the working women and provide them a safe and secure environment at the workplace, the government of India decided to frame an effective legislation which is known as the Sexual Harassment Act 2013. However sexual harassment at workplace was not mentioned as a separate offence in the Indian Penal Code (IPC). This issue was given attention around the year 1997. It was highlighted due to a Public Interest Litigation (PIL) filed in the Supreme Court by an NGO (Non-Governmental Organizations) called Vishakha. This NGO challenged the verdict of Rajasthan High Court on the gang rape case. While hearing the matter, the Supreme Court noted the lack of legal recourse against sexual harassment at workplace. The Supreme Court defined what would constitute sexual harassment at workplace and issued guidelines that were to have statutory value until a proper law was enacted by Parliament. Before the Supreme Court set the law against sexual harassment at workplace in order, such cases were dealt under IPC Section 354 (outraging the modesty of women) and Section 509 (using a word, gesture or act intended to insult the modesty of a woman). In the concerned case, a Rajasthan government employee with the Women's Development Project was gang raped for campaigning against and stopping child marriage. The perpetrators of this crime were some powerful landlords nearby the capital of Rajasthan, Jaipur. They were enraged when according to them a woman of “low caste” opposed the child marriage of a Gujjar family.

From the ancient time, gradually, the concept of the working women came into existence. In

addition to the domestic sphere women have taken professional roles outside their homes, this evolved into dual role of employed women and home maker. Sexual harassment in workplace is a serious irritating factor that renders women's involvement in works unsafe and effects right to work with dignity. Sexual harassment refers to any form of unwelcome sexual behaviour which is offensive, humiliating and intimidating. Further, it is against the law to sexually harass anyone. Over the years, sexual harassment has taken a lot of time to be recognized as a real issue. Nonetheless, it is a start that can protect people from this harassment.

Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental right to equality and right to life, guaranteed under Articles 14, 15 and 21 of the Constitution of India. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.

India's first legislation specifically addressing the issue of workplace sexual harassment; **the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act")** was enacted by the Ministry of Women and Child Development, India in 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("POSH Rules"). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("Criminal Law Amendment Act") which has criminalized offences such as sexual harassment, stalking and voyeurism. Although the law preventing sexual harassment at workplace has been in force since 2013, there remains lack of clarity on various aspects pertaining to the statute, including what constitutes sexual harassment, obligations of an employer, remedies/safeguards available to the victim, procedure of investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment. Lewd jokes, inappropriate comments etc. are dismissed as normal, with women being hesitant to initiate actions due to apprehension of being disbelieved or ridiculed; which underpins the need for greater awareness and greater enforcement. Moreover, the "POSH Act" is more centered on complaint redresses mechanism rather than prevention of such act whereas the major hurdle in combating with this evil is that majority of incidents are not reported. It is very clear that just black and white letters are not enough to provide a safer environment for women at workplace.

Types Of Workplace Sexual Harassment

There are usually following two types of workplace harassment-

- Quid Pro Quo sexual harassment which means demand for something in return for sexual favours; and
- Hostile Work Environment in which individual or group behaviours create the conditions those are intimidating or humiliating for the victim.

WHAT DO THE STATISTICS SPEAK?

In the current scenario each and every country have adopted preventive measures and laws for preventing, controlling and redressing workplace sexual harassment, yet have miserably failed and India is no exception to that. The current survey data emphatically speaks that this evil has not been curbed but on its contrary has rose. The survey reports also show that not all but only few cases are reported by the victims, majority of cases goes unreported.

Reports from United States

According to reported conducted by a non-profit organization Stop Street Harassment in 2018 found that nationwide, 81% of women reported experiencing some form of sexual harassment in their lifetime. The CNBC All-America Survey conducted in Dec 2017 found that overall 19% of American adults said they have been victims of sexual harassment in the workplace. Among women the figure was 27%.

Reports from United Kingdom

The Trades Union Congress its sexual harassment report named 'Still just a bit of banter?' conducted in Aug. 2016 found that

- Around 52% of all women polled have experienced some form of sexual harassment.
- Nearly one quarter of women have experienced unwanted touching and nearly one fifth of women have experienced unwanted sexual advances.
- In the vast majority of cases, the perpetrator was a male colleague, with nearly one in five reporting that their direct manager or someone else with direct authority over them was the perpetrator.
- Four out of five women did not report the sexual harassment to their employer.

According to the BBC survey of Oct., 2017 half of British working women have been sexually harassed at work or a place of study. Out of the women who said they had been harassed, 63% said they didn't report it to anyone. The BBC Radio 5 live survey, of 2,031 British adults, found that 37% of all those asked - 53% of women - said they had experienced sexual harassment, ranging

from inappropriate comments to actual sexual assaults. More women than men were targeted by a boss or senior manager and one in 10 women who had experienced harassment said it led to them leaving their job or place of study.

Reports from India

The National Crime Records Bureau 2014, 2015, 2016 shows that the cases of sexual harassment within office premises have been doubled—from 57% to 119% in the period of 2014-2016. There has also been a 51% rise in sexual harassment cases at other places related to work. India's largest survey on workplace sexual harassment was conducted by Indian National Bar Association (INBA) in 2016. The report was called 'Garima'. The initiative, reached out to over 6,047 people, of which, 78% were women. The interviews were conducted in over ten cities in India. The report shows that around 87.9% participants in the survey admitted that sexual harassment occurs within the community, while 54% replied in affirmative when asked if they have witnessed, perpetrated or been a target of sexual harassment. Around 50.7% of the participants admitted to witnessing or being a target of sexual harassment online or on social media. The report further discloses the facts that

- 38% women had faced sexual harassment at workplace.
- 70% working women do not report workplace sexual harassment in India. 65.2% women said that their respective company did not follow the procedures laid down under the POSH Act, 2013.
- 46.7% surveyors said that the Internal Committee were not aware of the sections and the legal provisions available under the Act.
- 50% of the victims left the place post the closure of their case.

Between Jan 1, 2017 and Dec 12, 2017 the National Commission for Women (NCW) received 539 complaints, an average of 1.7 complaints per day with Uttar Pradesh leading the list with a total of 141 cases registered with NCW followed by Delhi and Maharashtra with 71 and 40 cases respectively. Cumulative data for four years from 2014 shows a similar trend with the NCW receiving 1.8 complaints per day on average. This data consists of only the reported cases. There are surely many more cases which went unreported.

Why it goes Unreported?

Sexual harassment is often viewed as a hidden issue in our society. The victims are often asked to keep quiet. The victims thus often feel it right to normalize and keep it to themselves. The survey data speaks a lot about this issue. One thing that all the surveys found in common was that the majority of women don't report sexual harassment out of the fear of losing their jobs, lack of confidence in the organisation, low awareness about law and procedures, threat of professional

victimisation, stigma, and embarrassment.

The Equal Employment Opportunity Commission (EEOC), 2016 study revealed that “Only 6% to 13% of individuals who experience harassment file a formal complaint. That means that, on average, anywhere from 87% to 94% of individuals did not file a formal complaint”.

In India only 50 out of 500 harassment cases are reported by the victims or the witnesses. The INBA 2016 survey revealed that most of the women victims dealt with it on their own instead of filing a complaint. Fear, embarrassment, lack of faith in the redressal mechanism, unawareness was some of the reasons cited for not reporting to the management. Around 69% of the victims did not complain to the management fearing repercussions or retaliation.

To sum up following facts may be cited to be the main reasons of not reporting harassment-

- Blame, fear and embarrassment are the main reasons why the victims don't report it. Many women did not report because they did not want to "make an issue". Fear of losing job on reporting and the fear of blame coming on them stopped them from reporting it. Women tend to hold themselves responsible, at least in their thought process.
- 70% women said they did not report sexual harassment by superiors because they feared the repercussions.
- The lack of social support from their friends and family is another reason. Around 42.2% of the victims who reported sexual harassment said that they were not treated fairly by their peers and colleagues during the period of inquiry.
- The Internal Committee members and the women employees are not entirely aware of the provisions of the POSH Act, 2013. The INBA survey stated despite provisions under the POSH Act, 2013, 56.7% of the respondents said that the members of the internal committee did not have proper knowledge of the process that needs to be followed. In many cases the non-verbal forms of sexual harassment were not regarded as harassment and the women was blamed for making an issue out of “nothing”.
- Many companies have still not established Internal Complaint Committees suggested by the POSH Act by saying that instances for sexual harassment cannot happen in their work places.
- The dignity of women is often put at stakes by the ICC. They are very often subjected to embarrassing questions. It was found that in some cases the Committee insisted on a ‘physical demonstration’ of the molestation and asked her prejudicial questions such as whether she had consumed liquor on the night of the incident.

POSH Act

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (also referred to as the “POSH Act”) came into existence in 2013. The Act establishes a mechanism for dealing with sexual harassment complaints in the workplace. The POSH Act has been implemented to prevent and protect women from sexual harassment at the workplace and thereby ensure a safe working environment for women. The POSH Act, as mandatory compliance, requires every company having more than ten employees to constitute an Internal Complaints Committee (ICC) in the prescribed manner to receive and address the complaints of any sort of sexual harassment from women in a time-bound and extremely confidential manner. The person who can file a complaint has to be a woman, the POSH Act is not gender-neutral.

Most of the scholars have pointed out their views about sexual harassment related environment in their studies and concluded that frequent offensive conducts leads to the creation of a hostile environment. Isolated or infrequent incidents of extremely offensive sexual or sex-based verbal conduct, particularly when perpetrated by a supervisor or coupled with physical conduct, however, may create a hostile environment. It is also important to note that the boundaries of the work environment are not determined by location. Instead, the boundaries of the work environment are defined by whether or not the person is doing something related to his or her job. For this reason, harassment can occur in locations outside the traditional work site. The workplace includes any place where employees happen to be for work related purposes. This includes traveling to work-related conferences or branch offices, attending staff parties, attending conferences, or at the home of a colleague for a work related activity. The key to understanding the boundaries of the work environment is to consider whether the person is in a specific place because of their job. If the answer is yes than any unwanted and offensive sex-based conduct could be considered sexual harassment.

That is why most of the social activists have concluded that being sexually harassed at the work place is a severe blow to one’s personal dignity and often affects the mental well-being of the person. This leads to a toxic work environment. It is important to understand that the intent of a person’s behavior, whether the behavior is face-to-face or behind another employee’s back may be irrelevant in determining whether or not a behavior is sexual harassment. What matters is the impact of the behavior on the work environment. Regardless of intent, the behaviour may be judged

on its impact upon the work environment. Therefore, the person accused of sexual harassment cannot be defended by stating that it did not had any negative consequences.

Evolution of The Law :

Sexual harassment of women at workplace was for the very first time recognised by the supreme court of India in its landmark judgement of *Vishakha vs. State of Rajasthan*¹(Vishakha Judgement) wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. Nothing less of an irony, the POSH Act and the POSH Rules was enacted 16 years after the Vishakha Judgement.

In the year 1992, Bhanwari Devi, employed with the rural development program of the Government of Rajasthan, was viciously gang-raped because of her efforts to stop the then prevailing practise of child marriage in support of the government's campaign against child marriage. With an intent to seek revenge from Bhanwari, five men attacked Bhanwari's husband and brutally raped her. However, due to the great political/social influence of the family of the accused, the rape survivor did not get justice from the courts and the rapists were allowed to go free.

Supporting the cause of working women in India, lawyers and women's rights activists filed public interest litigation (PIL) in the Supreme Court under the banner of Vishakha. The Supreme Court, considering such grave concern, acknowledged the serious legislative shortcoming and acknowledged workplace sexual harassment as a human rights violation under the Constitution of India. In framing the Vishakha Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishakha Judgment, the Vishakha Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector. As per the Vishakha judgment, '*Sexual Harassment*' *includes such unwelcome sexually determined behavior (whether directly or by implication) as:*

- a) *physical contact or advances; or*
- b) *a demand or request for sexual favours; or*

¹1997 6 SCC 241: AIR 1997 SC 3011

- c) *making sexually coloured remarks; or*
- d) *showing pornography; or*
- e) *any other unwelcome physical, verbal or non- verbal conduct of sexual nature.*

The following circumstances, among other Circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual Harassment may amount to sexual harassment:

- Implied or explicit promise of preferential treatment in employment;
- Implied or explicit threat of detrimental treatment in employment;
- Implied or explicit threat about present or future employment status;
- Interference with work or creating an intimidating or offensive or hostile work environment or;
- Humiliating treatment likely to affect the lady employee's health or safety.

Provisions of the POSH Act :

- The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaints and safeguards against false or malicious charges.
- Every employer is required to constitute an Internal Complaints Committee (ICC) at each office or branch with 10 or more employees.
- The Complaints Committees have the powers of civil courts and are required to provide for conciliation before initiating an inquiry if requested by the complainant.
- Penalties have been prescribed for employers for non-compliance with the provisions of the Act.
- The State Government will notify the District Officer in every district, who will constitute a Local Complaints Committee (LCC) to enable women in the unorganized sector or small establishments to work in an environment free of sexual harassment.

She- Box :

- The Ministry of Women & Child Development had launched Sexual Harassment electronic Box (She-Box) to provide single window access to every woman, irrespective of her work status, whether working in the organized or unorganized, private or public sector, to facilitate the registration of complaint related to sexual harassment.
- Any woman facing sexual harassment at the workplace can register their complaint through this portal.

- Once a complaint is submitted to the ‘She-Box’, it will be directly sent to the concerned authority having jurisdiction to take action into the matter.al harassment.

Some other judgements leading to the implementation of POSH Act:

1. *Rupan Deol Bajaj vs. K.P.S. Gill (1995)*: A senior IAS officer was sexually harassed (slapped on the posterior) by a superior officer and the recourse to the limited provisions of the IPC under Section 354 and Section 509 were not found sufficient by the High Court. This gap in the law was very apparent and the need for further reforms on sexual harassment was obvious.
1. *Apparel Export Promotion Council v. A.K Chopra (1999)*: The council Chairman was accused of sexually harassing the secretary. Though he made repeated attempts; the chairman never actually molested her. On her complaint the employer was fired. On the basis of a writ petition filed by the employer the Delhi High Court took cognizance of the fact that he never actually molested her and did not make any actual physical contact. Thus concluding that he did not actually molest her. In an appeal filed by the council, the Supreme Court reversed the Delhi High Court Judgement, by widening the scope of sexual harassment and ruling that “**physical contact is not always essential for an act amounting to workplace sexual harassment.**” Sexual harassment is seen as any ‘unwelcome’ act. The Apex Court asserted that sexual harassment compromised the dignity of women and cannot be condoned.
2. *DS Grewal v. Vimmi Joshi (2008)*: A colonel of the Indian Army made advances and wrote inappropriate letters to the principal at an army school. The principal was apprehensive that if she objected to his conduct, he would create a hostile working environment and hinder her employment, including her promotion. Her fears did come true as her services were terminated. The Supreme Court ordered the school management to constitute a three- member complaints committee (as mandated by Vishakha Guidelines) to ascertain if there were any prima facie case against the army officer. If the committee found such a case, it would submit its reports to the army, which would then initiate disciplinary proceedings. The court also affirmed that the school management was bound to bear the legal costs incurred by the principal (with

counsel fee assessed at 50,000) for it had not complied with Vishakha Guidelines to begin with.

3. *Medha Kotwal Lele & Ors. v. Union of India & Ors. (2012)*: The Petitioner wrote a letter highlighting several cases of sexual harassment and describing that the Vishakha guidelines were not effectively implemented in the country. The letter was converted into a writ petition and was filed in the Supreme Court of India where the petitioner alleged that the guidelines that were laid down in the Vishakha case were unable to curb sexual harassment in workplaces because these guidelines were violated in both substance and spirit by the state authorities. The Apex Court held that several states were not properly implementing the guidelines. The Supreme Court issued the following directions:
 - State governments should make sure that there are sufficient complaint committees made within each state to hear every single complaint that is made and also these committees should be headed by a woman.
 - Appropriate mechanisms should be created by the state authorities to make sure that effective implementation of the Vishakha guidelines is taking place.
 - It shall be the duty of the Bar Council of India to make sure that all the bar associations in the country and individuals registered with the State Bar Councils adhere to the Vishakha guidelines.
 - In the case of non-compliance to the Vishakha guidelines, it would be open for the aggrieved individuals to approach the High Court of the concerned state.
4. *Seema Lepcha vs State of Sikkim and Others (2012)*: Seema Lepcha, a widow and a peon working at the central bank was sexually harassed by the Chief Manager of the Gangtok bank branch. Now as per the Vishakha guidelines, there needs to be an independent committee looking after the sexual harassment cases in the organizations which were not present at the bank workplace. A writ was filed in the High Court of Sikkim concerning the absence of the independent complaint committee in the bank. The High Court directed the respondents to create a complaint committee and have the proper training for sensitization of the bank employees and to structure policies for

preventing cases of sexual harassment in the workplace. The order of the High Court was challenged in the Supreme Court where the Supreme Court gave the following guidelines:

- The State government shall provide comprehensive publicity to the notifications and orders issued by it in adherence to the Vishaka guidelines and the directions issued in the Medha Kotwal case by the Supreme Court and this should be done by publishing all the information in the newspapers having the most circulation in the state after every two months.
 - Complete publicity should be given in Doordarshan about the several steps taken by the state government for enacting the guidelines laid down in the Vishakha case and the directions given by the Medha Kotwal case.
 - Wide publicity should be given by the social welfare and the legal service authority of Sikkim to the notifications and orders given by the state government for both the government and private institutions.
5. *Mukesh & Anr. vs. State for NCT of Delhi & Ors. (2017)*: A 23-year-old was brutally raped and assaulted by six individuals and her friend had been badly beaten up by the perpetrators. She even got attacked by an iron rod because of which she had her intestines pulled apart and then later on she died. The Supreme Court's bench passed the death penalty to all the persons involved except for the juvenile, who was convicted and sentenced to three years in the reformation center. This incident shocked the whole of India and it ignited the fire for women's rights and safety in the country. Several legislative reforms were made, [the Criminal Law \(Amendment\) Act 2013](#), was enacted which in the process provided for the amendments of [Indian Penal Code, 1860](#); [Code of Criminal Procedure, 1973](#), [Indian Evidence Act, 1872](#), and [Protection of Children from Sexual Offences Act, 2012](#) with regards to the sexual offenses connected laws. The amendment introduced [Section 354A IPC](#) which defines Sexual Harassment and provides punishment for the same. A man committing any of the following acts—
- physical contact and advances involving unwelcome and explicit sexual overtures; or
 - a demand or request for sexual favours; or

- showing pornography against the will of a woman; or
- Making sexually coloured remarks, shall be guilty of the offence of sexual harassment and shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or both.

This provision is not limited to sexual harassment at the workplace, but punishes such harassment done anywhere.

Criminal Law Provision

The provisions of the Indian Penal Code (IPC) can aid in the event of sexual harassment in the work place and sexual harassment of women. In the IPC, there is no chapter specifically dealing with “Crimes against Women” and there is no act listed or described as “Sexual Harassment”. To invoke the operation of penal provisions, the sole requirement is that the act complained of i.e., sexual harassment must have all the ingredients of the commission or commission of the offence. In the well-known case of Vishakha the Supreme Court of India expressed its serious concern over sexual harassment. The Court stated that, where "conduct amounts to a specific offence under IPC or any other law" the employer is under a legal obligation "to initiate appropriate action in accordance with law by making a complaint with the appropriate authority". The Supreme Court observed that “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-colored remarks;
- (d) showing pornography
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Sections 292, 354 and 509 of the Indian penal code cover such behaviour. It may be noted that the definition of sexual harassment given by Supreme Court is an inclusive one. It does not preclude the possibility of other serious manifestations of sexual harassment being covered under offences that are already defined in the penal code.

The provisions of the IPC which may be used in the case of sexual harassment at the workplace are:

Section 107-109	Abetment
Section 120A and 120B	Criminal Conspiracy
Section 166A	Public servant disobeying direction under law
Section 292-294	Obscenity
Section 306	Abetment of Suicide
Section 319-331	Relating to hurt and grievous hurt
Section 326A and 326B	Causing grievous hurt by use of acid, etc.
Section 339-348	Relating to wrongful restraint and wrongful confinement
Section 354	Assault of criminal force to women with intent to outrage her modesty
Section 354A	Sexual harassment
Section 354B	Assault or criminal force with intent to disrobe
Section 354C	Voyeurism
Section 354D	Stalking
Section 375 and related provision	Rape
Section 376C	Sexual harassment by a person in authority
Section 415-417	Cheating
Section 499-500	Defamation
Section 503, 506 and 507	Criminal intimidation
Section 508	Act causing by including the person to believe that he will be rendered the object of divine displeasure.
Section 509	Word, gesture or act intended to insult the modesty of a women
Section 511	Attempt to commit offence.

POSH During COVID-19 :

Will sexual harassment in the workplace become less important in the post-Covid-19 work environment? Maybe, but probably not. Working from home may just move the harassment online. At first glance, if more work remains distanced in the post-Covid-19 world, opportunities for workplace sexual harassment would seemingly necessarily decline. But undermining this optimistic projection is [the reality](#) that industries that are most likely to remain distanced—those mainly employing white-collar workers—already have lower rates of sexual harassment than industries where most work can't be conducted remotely.

For those whose work can remain distanced, can we hope that their experiences of sexual harassment will decline? Not necessarily. The most common form of sexual harassment—hostile work environment harassment that is sex-based but not “sexual” as commonly understood—[does not require in-person contact](#). This form of sexual harassment undermines an individual’s work performance because of their sex or gender by creating an intimidating, hostile, or offensive environment. Distanced work is not immune to hostile work environment harassment; it may even facilitate it through expanded digital opportunities.

With remote working and lack of physical proximity, did all the sexual harassment at workplace stop? Are internal committees relieved of handling any complaints? The answer is no. Sexual harassment concerns still continue to exist, but the modes of harassment and the scenarios have changed. With long working hours, work weeks being extended into weekends, and multiple modes of interaction like official chat rooms, emails, videos, and WhatsApp, the workplace has extended to our homes and during most of the day. There is no demarcation between personal and professional lives. Also, with limited social interactions outside of work, the situation has become more complex for the already stressed working professionals in the country. Due to employees working from home, harassment has taken a new form and shape! It is now in the form of displaying objectionable material on the screen during video calls, displaying unacceptable screensavers with sexual connotations, getting into the personal space of another employee by insisting they turn on video while calling, asking personal questions on official platforms, calling a person during late hours without any justification, taking screenshots of colleagues during video calls and using such images inappropriately, displaying suggestive words on attire like t-shirts during video calls, etc.

Indeed, electronically sharing humiliating private messages and sexually suggestive or hostile jokes, photos, videos, and memes—which can be widely circulated with a touch of a key—is easier than in person, and can readily be employed to shame, intimidate, or threaten targets. And unlike in-person meetings, it can be fairly easy for those in higher positions to undermine their target’s work performance by “accidentally” muting, talking over, or excluding them from Zoom calls.

Furthermore, even those who largely work remotely may be required to show up at a mostly empty workplace on occasion. Isolated workplaces are [a known risk factor for sexual harassment](#), and in-person harassment may increase as fewer people in the workplace means fewer potential witnesses.

Also problematic is that reported cases may drop even without an actual decline in harassment. [Sexual harassment is substantially underreported](#), in part because victims rightly fear retaliation. Remote work may lead to even less reporting because what counts as sexual harassment is often unclear. This opacity is exacerbated with remote work if there is less exchange of information or if harassment takes new digital forms, leaving victims alone in deciphering whether specific behaviors should be reported. Less reporting may spuriously indicate an improved environment and in turn reduce pressure to stop harassment.

In addition to accelerating current trends to distanced work, the disruption to the workplace caused by Covid-19 may have other longer-term consequences, some positive, some less so. It is possible that our experience with Covid-19 might change some workplace norms for the better and limit opportunities for unwelcome sexual attention. For instance, will there be less hugging? More respect for personal space? Reduced travel and socializing?

Less positive is that changes in workplace structure have legal ramifications as well. If former employees displaced because of Covid-19 turn to long-term independent contractor status, they lose government protection against employment discrimination, including sexual harassment (at least in the US). In the absence of legal remedies for these workers, there could be an increase in actual sexual harassment despite a decrease in reported harassment.

Challenges To Be Addressed :

This new way of working has challenged both employees and employers alike. Employers have to think creatively and out-of-the-box to impart new, effective ways of sensitising the employees, moving away from traditional classroom trainings. Remote working requires a conscious shift in the mindset of employees, too, to ensure that they maintain professionalism in their emails, interactions, and appearance while being in their personal space (home). It is difficult to make that mental shift when each of your respective homes is now your “workplace” and every interaction can come within the purview of the Act. Also, due to the interactions now moving to phones or video calls in place of in-person meetings, sexual harassment claims could arise due to misunderstanding or even when done unintentionally. Another person’s tone can be misconstrued. Accidentally enabling the video call option so that objectionable material is seen by the other

person could trigger sexual harassment claims. Using brackets with H or B on an instant messaging platform could be sent as a hug or beer emoticon, which can be considered offensive by the recipient. While conducting investigations re-motely, maintaining confidentiality is the biggest challenge for all parties, as we are constantly surrounded by others. The time taken for investigations and closure of an inquiry may also be extended due to non-availability of an internal committee quorum at the same time, preference for personal cross-examinations, or the internal committees inability to examine evidence during the COVID-19 situation.

Conclusion:

The positive impact of the POSH Act as an effective legal recourse for women facing sexual harassment in the workplace is visibly seen in the continuously rising numbers of complaints of such cases every year. As the cases reported of sexual harassment at workplace jumped up almost 54% in 2018 and 14% in 2019, there was a concern on the part of people in general but the industry experts point out that this increase in reportage is a healthy indicator. The total number of sexual harassment complaints at workplaces in 44 Nifty companies fell 38.26% in FY21, showed data analysed by anti-sexual harassment advisory complykaro.com from company annual reports. These companies received a total of 455 complaints of sexual harassment in the year ended 31 March, compared with 737 and 739 in FY20 and FY19 respectively. It points to a greater awareness among women about legislation on sexual harassment at the workplace as all organizations have implemented the recommendations and provisions described under the POSH Act, 2013.

“Women are more prompt these days to report any case of sexual misconduct and it is the responsibility of organizations to take speedy action,” said Suresh Tripathi, vice president, human resource management, Tata Steel, “Prompt action by organizations will act as a deterrent for others, and it will encourage women to come out and report,” he said, adding, “Increased reporting is good to start with as it means there is more awareness. It (such cases) will plateau and start coming down...”

Everyone has turned to the usage of the video calling for conferencing with people, which has made applications like Zoom, WhatsApp, Microsoft teams, Hangouts, etc popular. For the purpose of imparting education or for taking lectures-based classes and sharing study materials, reference materials and for entertainment purposes for some during online classes. However, as it goes with human nature, things can easily fall into the wrong hands and as such there has been a growing rise in virtual harassment through these media based technological platforms, especially during the present ever extending lockdown.

Female teachers and faculties has increasingly reported about privacy infringement and cyber security all over the world, as a students conduct of the misbehavior remains unknown because applications like Zoom which allow users to use any username with their video off. Passing lewd comments, bullying, trolling, cyber flashing (forcefully sending unsolicited pictures of private parts) and disruptive communications, all of which become a medium to break the class ambience.

In India, the law is quiet in such manner as taking of screen shots don't fall under the classification of voyeurism or protection infringement as addressed to under Section 354C of the Indian Penal Code and 66E of the Information Technology Act, both tending to voyeurism. Thus, these cases are not legally addressed as there exists no mechanism for control of grievances of the like, and are waived off on the basis of general technological mishap and misunderstanding.

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