

Sexual Harassment of Women Reflections on the Private Sector

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The private sector in India has by and large not been very receptive to women's complaints about sexual harassment at the workplace. This article highlights the importance of company policies on sexual harassment, the role of their human resource departments, and says that the private sector has to clearly articulate and uphold its code of conduct to prevent and address sexual harassment at the workplace. The effectiveness of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 remains to be seen.

Even while the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2013 was being discussed (before it was enacted on 22 April 2013), the national press was reporting defiance of the Supreme Court's (sc) Vishaka guidelines by multinational companies.¹ A glaring instance involved the multinational audit firm KPMG, which operates in 156 countries, including India. In 2006, a chartered accountant working in a senior position complained against a partner, but the firm failed to constitute a complaints committee as mandated by the Vishaka guidelines of 1997. Instead, her services were terminated, severely hampering her prospects for future career growth (Deshpande 2013a). She faced a disparaging campaign online after her name was revealed in 2007 in reports on the case. Her ordeal continues as she goes on with her battle. She faces problems in finding new employment, and has been branded a legal terrorist (Menon 2013).

For 15 years, government agencies such as the National Commission for Women (ncw) and women's groups consistently pressed for a law on sexual harassment. If one looked at the implementation of the sc-directed Vishaka

guidelines (1997) it was observed that their implementation in the private sector remained uneven. A 2010 survey brought out that 88% of the women working in information technology (IT) and business process outsourcing (BPO)/knowledge process outsourcing (KPO) companies had suffered some form of workplace sexual harassment (Sharma 2010). Media reports and studies show that many private sector organisations do not have any special policy on sexual harassment. Even where policies exist, strict and compulsory adherence to them is rare. The dismal situation needs urgent attention. This article attempts an overview of sexual harassment in the private sector in India and puts together suggestions to overcome them. It analyses the issue on the basis of the implementation of the sc's guidelines, the importance of workplace policies on sexual harassment, and the role of human resource (HR) departments.

Reluctant Private Sector

The sc's Vishaka guidelines initiated a discourse in India on sexual harassment and benefited women by reconfirming their right to a safe working environment. They proposed providing a safe and gender-friendly atmosphere for working women by instituting in-house mechanisms for redressing complaints. Surveys done by organisations across India over the years have revealed that employers either choose to ignore the guidelines or to not take them seriously. Sexual harassment at the workplace remains the

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most under-reported form of gender discrimination (Shukla 2002) and the private sector has been very reluctant to acknowledge its existence.

Poor and faulty implementation of the Vishaka guidelines has been discussed by Oversier (2010) and Majumdar (2003). The industry persons and academicians quoted in these studies confirm that the issue of sexual harassment has largely been swept under the carpet in India. Further, they accept that the provisions have never been successfully invoked because of the social taboos still associated with sexual harassment and the long delay if a case ends up in court. Overall awareness among Indian companies about the need for a well-defined mechanism to tackle sexual harassment at the workplace is terribly poor. Moreover, multinational companies seemed to be taking advantage of the space left by the absence of a law.

Sarpotdar (2012) gives an insight into the uphill task women face. Challenging an employer is overwhelming and practically difficult for any woman who has faced sexual harassment, given the enormous cost it entails in terms of time, energy, and determination. Fighting powerful transnational companies, which have tremendous resources, is liable to crush women as it is not just a question of tackling an unyielding employer, but also confronting bureaucratic challenges thrown up by the police and the courts. Women's rights activists point out that organisations generally view such cases from the perspective of their public image and not as a breach of an individual employee's right to dignity and safety, leading to skewed attitudes and hushing up of such cases (Deshpande 2013b).

It is important to note that the sc in an interim order issued in 2006 designated the labour commissioner's office of each state as the nodal agency to collect details about complaints of sexual harassment and to make sure that the required committees are established in factories, shops and commercial establishments.² Records at the Maharashtra Labour Commissioner's office examined by Pinglay (2012) showed only three complaints from 2010 to 2012, while

there were 700 complaints registered unofficially at the Karnataka Labour Commissioner's office (Phadnis 2013). This revealed serious problems in companies complying with the sc's directions. Taking cognisance of this, the apex court reiterated its directions in *Medha Kotwal vs Union of India* (2012), with special reference to nursing homes, law, architecture, and engineering firms. It directed statutory institutes to ensure that the organisations, bodies, associations, institutions, and persons registered/affiliated with them followed the Vishaka guidelines.

In 2011, a report by a Joint Parliamentary Committee (JPC) reviewed the Sexual Harassment Bill 2010 and summarised the issue.³ It recorded that the absence of a central mechanism meant there was no database with the Ministry of Women and Child Development on the number of complaints, their resolution, and the action taken, especially in the private sector. As a consequence, the extent of implementation of the Vishaka guidelines in the private sector could not be ascertained. The JPC concluded that in the absence of penal provisions, compliance by employers in the private sector could be lax, and that the sc's guidelines probably remained on paper in a majority of workplaces.

Importance of Policy

A deficiency of policies or poor policies to deal with sexual harassment at the workplace is not the issue, but non-adherence to the existing policies. In addition, there is a paucity of trained personnel to implement the policies and handle cases of workplace sexual harassment (Sharma 2010). Studies ascribe this to a lack of commitment on the part of company heads, who do not assign due importance to the issue of workplace sexual harassment on their organisational agendas.

The approach of the private sector to sexual harassment policies can be explained by drawing on Ravichandar (2010). There are five mental blocks that chief executive officers (CEOs) and managements face in implementing robust policies against sexual harassment. They can be summed as the five Ds –

denial, dismissal, double up, delegation, and danger. It is seen that most companies live in a state of denial. They believe that sexual harassment does not exist in their organisation because there are no reported cases. They also believe that they are open enough, and any employee can openly report sexual harassment. Companies tend to dismiss the issue as unimportant because they do not want to give priority to it. Majumdar (2003) points out that the course adopted by companies is to ignore such complaints in the hope that everything will be forgotten and forgiven in due course, and in the belief that managements need not get involved in the "mess". Many companies believe that there is no need for a separate committee or policy to deal with sexual harassment because the HR department will be able to handle the situation when the need arises and that the employee code of conduct will be adequate for this.

But it is important to understand that sexual harassment is a socio-legal issue surrounded by shame, stigma and confusion. A general code of conduct may not address the requirements and specifics of the issue. It is necessary that a special policy be formulated and institutionalised, which ensures empathetic response, sensitive handling, mature investigation, and prompt implementation of the recommendations made by the complaints committee on sexual harassment to the management. While there are strict policies followed globally to counter the problem, such policies are only slowly beginning to take shape in Indian companies (Ghosh, Puri and Dewan 2010). In the absence of service rules, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Rajya Sabha Secretariat 2011) underlines the necessity of a policy in private organisations that

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expresses zero tolerance to sexual harassment at the workplace and explains the provisions of the law in simple language with examples.

Human Resource Teams

It is important to look at the role of HR departments in preventing and dealing with complaints of sexual harassment. Daft (2009) says that global firms have to abide by local laws and regulations on wages, employment safety, consumer protection, and other such issues. The right to a healthy and safe work environment is the basic democratic right of all workers (Creighton 1984). Macdermott (1995) explains that this right is given expression through employers providing a work environment free from sexual harassment. HR teams within companies are primarily responsible for providing mechanisms to prevent, deter, and redress sexual harassment. They have a crucial role to perform when it comes to implementing an organisation's policies on sexual harassment, diversity, and so on, and in facilitating resolution of complaints.

It is important that HR departments follow three steps that can effectively deal with the hazard of sexual harassment. One, the HR department, in coordination with the legal department, should issue a written policy on sexual harassment and discrimination in general. Two, this policy should express zero tolerance to sexual harassment at the workplace. Three, it should define sexual harassment, giving relevant examples of inappropriate behaviour, outline the procedure to redress complaints of sexual harassment, and emphasise that there will be no retaliation against complainants. A copy of the policy should be provided to every employee, especially new recruits at the time of induction training. The policy should be regularly reviewed to suit changing times. A senior officer of the HR department should monitor and evaluate implementation of the policy. This officer can function as a link between the HR department and the sexual harassment complaints committee of the company.

Managers and supervisors should be made aware of sexual harassment,

and trained to recognise and prevent instances of it happening around them. Women employees have to be encouraged to not tolerate incidents of unwelcome behaviour at work and report them. HR departments need to make sure that all allegations of sexual harassment are enquired into at the earliest, making sure that the rights of the complainants and witnesses are safeguarded. Detailed and systematic records of interventions and enquiries have to be maintained by HR departments. Since these departments are key to maintaining discipline in companies, they should ensure that action is taken against those found guilty of committing sexual harassment, irrespective of their position.

The Way Forward

It is known that women in India look at formal complaints of sexual harassment as the last alternative because they do not want to be seen as challenging their employers or creating a disturbance in the organisation. Private organisations have to initiate a dialogue and discussion on policies against sexual harassment, taking sociocultural nuances into consideration. Adhering to the policies, and government agencies and industry confederations monitoring their implementation is the next step. It is mandatory for employers to remind employees that they will not tolerate sexual harassment by anyone.

The 2013 Act is the codification of the sc directions regarding sexual

harassment at workplace. It recognises that every woman has a right to work with dignity and sexual harassment as violation of fundamental rights of working women. Therefore in accordance with the law, the private sector organisations need to clearly articulate their position by upholding their code of conduct to prevent and address sexual harassment at the workplace, and by having a transparent system for redressal. While companies are gradually taking and now legally mandated to take corporate social responsibilities seriously, there should be a focus on corporate responsibility towards employees and the need to provide them with a safe and harassment-free work environment.

NOTES

- 1 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013 was passed by the Rajya Sabha on 26 February 2012 and the Lok Sabha on 3 September 2012 and it became a law on 22 April 2013.
- 2 An interim order was issued by the Supreme Court in *Medha Kotwal vs Union of India* in 2006. Details can be found at <http://hrln.org/hrln/womens-justice/-pils-a-cases/239-medha-kotwal-lele-vs-union-of-india-and-others-.html>
- 3 See point 1.8 of the JPC report.

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