Sexual Harassment of Women Current Scenario of Indian Hospitals

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Abstract
Sexual Harassment of women at work place is prevalent throughout the globe. India is no exception to this evil based on gender discrimination especially in health care set ups, is a grave form of human rights violation of a almost half of the human folk. Although the Hon'ble Apex Court of India has ruled in 1997 regarding the implementation of guidelines to prevent sexual harassment of women at work place, but without effective implementation, results in violation of human rights of working women as well as service consumers in Indian hospitals. The Bill on this issue is also pending in the Parliament for its nod since 2005.

This paper deals with current scenario of Sexual Harassment of Women in Indian Hospitals, the Supreme Court of India’s views, Brief dissuasion of New Bill on the issue, so that persons involved in this noble profession can be made aware of their duties and rights to prevent human rights violations involved with this issue.

Key Words: Sexual Harassment, Women, Hospital, Supreme Court.

Introduction:
In a study “Sexual Harassment at Work Place: Experiences of Women in the Health Sector”, conducted by a Researcher, found that “Sexual harassment in hospitals, of women doctors and nurses, seems to have become a common practice in India. What’s worse, none of them had heard of a Complaints Committee for Redressal of their grievances. Several of the respondents also expressed their skepticism about the Grievances Committee’s effectiveness. The reason: many feared they would be blamed for provoking sexual harassment. Others worried about loss of reputation after complaining, less job security, etc. The study [1, 2] revealed victims were sexually harassed by not only their co-workers but also by patients and their relatives.

Doctors and nurses in the UK will be banned from having sexual relationships with former patients, it has emerged. Health professionals will only be allowed to date those they have previously treated when the clinical contact they had with each other was ‘minimal’. New guidelines will formally set out the sexual boundaries between doctors, nurses and patients for the first time: following a string of sex abuse scandals.

What was instrumental for formulating ‘guidelines’ in UK?

There have been a number of disturbing cases in recent years including Folkestone GP Clifford Ayling who was able to continue working despite complaints spanning 30 years. He was jailed for four years in December 2003 on 13 counts of indecent assault between 1991 and 1998. Ayling repeatedly convinced women they needed intimate examinations, and then sexually abused them. Many of Ayling’s patients complained that he was ‘overtly sexual’ in his behaviour, and colleagues were aware of the concerns. But a report into the case said there was little guidance as to how the NHS (National Health Services) should deal with such concerns.

Similarly, an inquiry showed a 30-year history of abuse of women psychiatric patients by Dr. William Kerr and Dr. Michael Haslam at Clifton Psychiatric Hospital, York.

As a result the Department of Health commissioned Council for Healthcare Regulatory Excellence (CHRE) to bring in clear guidance for health professionals on acceptable behaviour. The draft guidance was drawn up by a project team run by the CHRE, which included...
What constitute ‘Hostile Work Environment’?

2(u) “Hostile Work Environment” is said to be created when any act of Sexual Harassment has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment. [9]

The SC of India exercising its extraordinary powers under Articles 32 and 141 of the Indian Constitution for enforcement of ‘Fundamental Rights’ prohibited Sexual Harassment of Women (SHW) at work places laying down guidelines to fill the vacuum in existing legislation. Until suitable legislation will not be enacted in this area, these directions which would be binding, and enforceable in law. [6]

The judgment by a three judge’s bench headed by CJI, J.S. Verma, J., Sujata V. Manohar, and J., B.N. Kirpal, came on a petition brought as a class action by social activists and NGOs for the enforcement of ‘Fundamental Rights’ of working women. [6]

It also stated that when a woman has reasonable grounds to believe that her objection would “disadvantage” her in connection with her employment it would be considered as “discriminatory”. [6]

In a study “Sexual Harassment at Work Place: Experiences of Women in the Health Sector”, 135 women interviewed over a period of 11 months and found that “Sexual harassment in hospitals, of women doctors and nurses, seems to have become a common practice in India. In a shocking study carried out by International NGO, Population Council, 77 of the 135 women doctors and nurses, working in four hospitals in Kolkata, admitted sexual harassment. However, over 50 of them did not complain”. [8]

As many as 45: reported psychological harassment, 41: verbal harassment, 21: unwanted touch and 16: sexual gestures and exhibitionism. The study also revealed that just 20 of the 135 women interviewed were aware of the Supreme Court’s Guidelines on sexual harassment.

What’s worse, none of them had heard of a Complaints Committee for Redressal of their grievances. Several of the respondents also expressed their skepticism about the Grievances Committees effectiveness. The study [3, 4] revealed victims were sexually harassed by not only their co-workers but also by patients and their relatives.

Doctors and nurses alike agree that sexual harassment is an occupational hazard for working women. A 30 years-old government doctor said, “We have accepted this and this is how things will continue”. A 35 years-old nurse added, “Saying bad things when they see a woman is natural. It doesn’t matter if the man is a doctor or non-medical staffers”.

Indian Scenario:

Sexual Harassment as Professional Misconduct:

Abuse of professional position by committing adultery or improper conduct with a patient or by maintaining an improper association with a patient will render a physician liable for disciplinary action as provided under the Indian Medical Council Act (IMC Act) 1956 or the concerned State Medical Council Act (SMC Act). [4]

From professional misconduct point of view term ‘adultery’ involves doctors (both male and female), patient (both male and female) and their attendants, etc. Again consent of any of the party is no defense to escape the liability for punishment. Degree of association is not defined it may very from consensual sexual intercourse to any unwanted degree of physical relationship.

What is sexual harassment at workplace?

Sexual harassment is unlawful discrimination against a person with respect to that person’s compensation, terms of employment, conditions of employment, or privileges of employment, because of or on account of the person’s gender. (Source: www.legal-Term.Com)

Supreme Court Defines Sexual Harassment at Work Place:

The Hon’ble SC judgment has defined sexual harassment as "unwelcome sexually determined behaviours" such as physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. [6]
The study also found that in a large number of cases the victims were reluctant to go public on this issue. Of the 135 women interviewed, 45 were doctors. Of the 50 nurses, 31 were victims of sexual harassment.

**Less Job Security:**
The study further revealed that “By and large, doctors and nurses in Government Hospitals are permanent employment or on contracts that they lose their job if they go public”. [1, 2]
Shocking, the biggest perpetrators of abuse were patients and their family followed by doctors and non-medical staff. Nurses are the only group harassed by everyone: doctors, non-medical staff, patients and their relatives and outsiders. [1, 2]
Without a precise definition of what constitutes a woman’s ‘modesty’, for over a century, courts tried thousands of the offences of “outraging the modesty” of a woman. And now, the SC has finally defined ‘modesty’. Its definition: “The essence of a woman’s modesty is her sex”. [5]
The result of the labour of the Bench comprising Judges: Arijit Pasayat and S.H. Kapadia will help a glaring void in the Indian Penal Code, 1860, but the scope of the definition of ‘modesty’ as mentioned in Section 354 IPC appears to go far beyond what framers of the code possibly had in mind. [5]
“The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse... would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence”, the Bench said in a judgment that has drawn from several verdicts by different courts. [5]
In other words, outraging a woman’s modesty as mentioned in Section 354 IPC will apply to crimes against women that stop short of penetration, in which event it becomes rape. In the same judgment, the Court ruled that penetration alone was sufficient to qualify as rape whether there has been ejaculation or not. [5]
The Court’s definition shows growing sensitivity to a changing society in which relatively subtle acts of harassment of women have come to be viewed as crime. The Court also clarified that claim of lack of protest can’t be an alibi. The bench said: “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”. [5]

**Gravity of offence:**
Sexual harassment is a serious criminal offence, which can destroy human dignity and freedom. In an effort to promote the well being of all women employees at the work place the following code of conduct has been prescribed as Misconduct:

- Eve Teasing
- Unsavoury remarks
- Jokes causing or likely to cause awkwardness or embarrassment.
- Innuendos and taunts
- Gender based insults or sexist remarks.
- Unwelcome sexual tone in any manner such as over telephone (obnoxious telephone calls) and the likes.
- Touching or brushing against any part of the body and the like.
- Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
- Forcible physical touch or molestation.

**Broader meanings:**
- Gender Discrimination.
- Physical confinement against one’s will.
- Any other act likely to affect one’s privacy and includes:

**Disciplinary Actions for ‘Sexual harassment’:**

**Employees:**
- Suspended,
- Demoted,
- Dismissed,
- Deprived of increments, or
- Promotion.

**Students:**
- Suspended,
- Expelled,
- Result withheld, or
- Be debarred from examinations.

**Harassed? Just log on:**
- [www.nationalcommissionforwomen.org](http://www.nationalcommissionforwomen.org)
- [www.empowering-women.com](http://www.empowering-women.com)

**Websites should include:**
- Complaints and counseling units.
- Workplace code of conduct.
- Laws, new bills, laws proposed.
• Landmark judgments.
• Where to go and whom to contact?
• Expert committees; where to access them.
• View’s on women’s issues.
• Online complaint mechanism.
• Important help lines / Contact addresses, etc.

Reasons for Harassment: (Source NCW)
• Pornographic material others (1.24%).
• Others (24.46%).

Types of Harassments:
• Physical harassment (25.17%).
• Gender discrimination (68.26%).
• Mental harassment (32.62%).
• Others (24.45%).

Whose duty is to prevent SHW?
It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

Where any of these acts is committed in circumstances, that the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problem.

It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Preventive Steps:
All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
(a). Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
(b). The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
(c). 'As regards private employers steps should be taken to include the aforesaid prohibitions in the

• Ego problems (39.89%).
• Sexual perversions (12.05%).
• Sexual obsession (3.72%).
• Widowhood (1.06%).
• Separation from spouse (1.77%).
• Media influence (6.38%).

Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
(d). Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Criminal Proceedings:
Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Disciplinary Action:
Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

Complaint Mechanism:
Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer’s organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

Complaints Committee:
The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of
the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

**Workers' initiative:**
Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other Third Party Harassment:
Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms ‘of support and preventive action.

**Role of Governments:**
The Central / State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector. [6]

**Summary and Conclusions:**
If any employer or administrator of a Hospital ever allow or encourage harassment by remaining silent, there can be serious consequences. Part of their job is to promote and protect the welfare of employees. There can be at least two serious consequences:
- **Firstly**, the situation can get out of hand quickly and become much worse and
- **Secondly**, administrator may be the one accused of harassment because he let it happen.

Both of these consequences can have serious repercussions on administrators and Institution. In fact, there are at least three ways in which administrators may be alerted to a harassment situation in the workplace:
- An employee of organization might complain about another employee;
- Administrator may witness or overhear certain behaviours that might be considered harassments; and
- Administrator may even see or hear about behaviour that certain constitute harassment.

If an employee complains about the behaviour of another employee, the first thing administrator must do is to listen carefully. Do not offer an opinion and do not display emotions. Do not react rashly; at this point all administrator have is the word of someone who has a vested interest in the charge. Instead approach the situation by gathering data. Ask specific questions to the person complaining and then ask specific questions to the person against whom the complaint is made. This is not the time for evaluating the answers but for collecting the information. Inform seniors / supervisor of the situa-

**Awareness:**
Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner and then conduct subsequent investigations. [8]

If administrator observes what may be harassment ask the employees who were the target of the potential harasser, if the behaviour was indeed offensive to them. If the answer is yes, explain that such behaviour need not be tolerated. Ask questions and conduct an ‘investigation to determine additional facts. If administrator thinks that the behaviour of a person is offensive, inform the employees of all possible risks associated with the observed behaviour. Do this in a friendly manner, and not one that would seem to be corrective and accusatory, because the offending employee might not have been aware of the potential reaction to the behaviour. An appropriate comment from administrator at this point could prevent an unpleasant situation in the future.

When an administrator sees or hears behaviours that certain is harassment, it's his responsibility to stop it right away. Administrator's acknowledgment of the situation and confrontation of the offender may be enough to end the behaviour, but he may have to initiate appropriate corrective action to prevent it from happening again. This may include reassigning the offender to another department or shift or, eventually, termination. In any event, he should immediately report the encounter to your seniors / supervisor. [7, 8]

**References:**
2. Paramita Chaudhary. ‘Sexual Harassment at Work Place: Experiences of Women in the Health Sector’, by Population Council, an International NGO.