

Workplace Sexual Harassment: A Costly Affair for Organisations

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Abstract: *Safe, healthy and equitable organisational culture is imperative to build stronger economies; realize internationally agreed goals for gender equality, development and sustainability; and improve overall quality of life for women, men, families and communities. Regardless of increasing public awareness of constitutional mandate and legal framework in our country relating to Sexual Harassment at workplace, recent high profile scandals reveal a recurrent failure on the part of companies to effectively prevent, prohibit and redress sexual harassment in the workplace. Sexual harassment is an insidious crime and an occupational hazard encountered at workplaces across the world, disparaging overall health and wellbeing of all. It imposes a heavy cost on employees and organizations, but it's astounding that the majority of organisations turn a blind eye to this costly affair. The question here arises is: how much is a workplace sexual harassment claim actually worth? This paper is an attempt to investigate the potential cost of sexual harassment to organisations; it probes into the legal, financial, business and other risks associated with it; and present cases of few companies whose missteps and misdemeanour present cautionary tales for anyone running a business today.*

Key Words: *Sexual harassment, #Me too, Impact, POSH, Human rights.*

1. INTRODUCTION:

#Me too campaign, initiated by actress Alyssa Milano in response to the Harvey Weinstein scandal, hit a wave of catharsis all around the globe, with many hearts outpouring their confessions about sexual harassment (SH) and abuse experiences at workplaces. Despite of amplified voices of concern and worldwide public consciousness over the issue, sexual harassment at workplace (SHW) still prolongs to plague Indian workplaces. By now, we have probably lost count of so many eminent celebrities, CEOs and politicians, who have been publically slapped (on media) with SH allegations.

2. What is Sexual Harassment at Workplace (SHW)?

SHW is an unwelcome or uninvited or unwanted conduct of sexual nature, which is abusive, discomfoting, threatening or disparaging. According to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "Sexual Harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The below behavior might also be construed as 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.

3. What is the Potential Cost of Sexual Harassment in the Workplace?

Sexual Harassment is a persistent issue, whether at office, at academic institution, on street, or even at dwelling place is a problem getting ever-increasing attention everywhere (Brooks & Perot, 1991; Dziech & Weiner, 1990). It is a violation of human rights, constitutional rights, ethics and labour rights, which hampers gender equality and constricts the social and economic development of the country. A survey conducted by Indian National Bar Association (INBA, 2016), with 6,074 participants, working at BPOS, IT, education, legal, hospital and other working sectors in major cities revealed that, around 38 percent admitted to have experienced SH in their workplaces. Almost 70 percent of the victims did not report because many reasons like fear of social stigma or negative repercussions from employer or merely lack of confidence in the redressal mechanism. And shockingly 65 percent disclosed that their organisations are non-compliant with the SHW Act, 2013. SH is extremely common, but it's astounding that the majority of organisations turn

a blind eye or are often unaware about such significant compliance. Tackling SHW is indispensable for organisations to achieve social, economic and environmental objectives of sustainable development which are strongly reflected in 2030 Agenda for Sustainable Development. A survey of 614 companies, comprising both start-ups and larger companies conducted by Institute of Company Secretaries of India and regulatory compliance consultancy ComplyKaro, discloses an abysmally poor awareness and compliance of SHW Act, 2013. SH is a peril encountered at workplaces across the world, which reduces the quality of working life and jeopardises the overall welfare of people and also, undermines gender equality at workplace thereby imposing cost on firms and organizations. That's why we need to calculate the economic cost of SHW. But, how much does a SHW claim actually cost to businesses and other stakeholders? Let's examine.

- **Legal Cost of Non-Compliance**

The Constitution of India has guaranteed certain basic fundamental rights to all of its citizens. SH is a violation of fundamental rights of a person under articles 14, 15, 16 and 21 of the Constitution of India and also violation of right to work under Article 19 (1)(g) of the Constitution, which is a universally recognised Human Rights by International Conventions like Convention on Elimination of all Forms of Discrimination against Women (CEDAW) to which Government of India has ratified on 25th June 1993. The Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013 has imposed certain legal duties and obligations on employers to take necessary measures to prevent, prohibit and redress SH in their workplace. Recent cases highlight that the courts are ready to levy hefty penalties on employers who fail to avert SHW. Non-compliance with the provision to constitute an ICC has significant consequences – Section 26 of the Act stipulates that if the employer fails *inter alia* to constitute an ICC as per the Act, he will be punishable with a monetary penalty which may extend up to INR 50,000 and in case of repeated non-compliance of this provision there could be cancellation of the license (or withdrawal, or non-renewal or approval or cancellation of the registration) by the Government. In the fiscal year 2015, the U.S. Equal Employment Opportunity Commission (EEOC) received over 6822 SHW charges, which cost employers and perpetrators \$46 million, excluding monetary compensations for damages (Conte, 2010).

- **Financial Cost**

One of the biggest challenges that any company faces in the SH case, is unquestionably the monetary repercussions. It can be the most easily calculated cost for employers, and undeniably the most quintessential cost when it comes to handling SHW claims in the workplace.

- (a) **Costly law suits**

SH can cost companies thousands or even millions of dollars to victims and in attorneys' fees. It may not even be possible to accurately assess the total damage caused by SH, because so many of the cases are settled privately and SH is still under-reported. A criminal case can be filed under Section 294, 354, 509 of Indian Penal Code (IPC), the Indecent Representation of Women (Prohibition) Act and /or a civil suit under the tort laws. A civil suit can be registered for the overall damages caused to victim such as, mental trauma, physical harassment, loss of employment and income etc. In a high profile scandal an egregious pattern of around **60** allegations of **varying degrees of SH** and **27 accusations of sexual assault** against Hollywood producer, Harvey Weinstein have by now reached eight settlements with women to avoid "lengthy and costly" litigation, which were in the six figure range.

- (b) **Monetary Compensations**

The SHW Act, 2013 has enabled the relevant enquiry committee to recommend to the Employer/District Officer that, in addition to disciplinary action, a monetary compensation will also be paid to the victim. Expensive human rights claims award huge compensation to the victim (for the mental pain and trauma, lost career opportunities and wages and violation of their right to be free from discrimination) in the form of general damages (for which they do not require an employee to leave his or her job to be eligible) or aggravated damages (in which the employer dismissed the employee); and punitive damages (punish the harasser instead of compensating the victim) which can cause a great economic loss to the organization. A woman in California was awarded some \$168 million in a court case in 2012 for punitive damages, lost wages, mental anguish and violation of health and safety code. She was a physician's assistant at a hospital in Sacramento and said she experienced unwanted sexual advances and touching and inappropriate comments from surgeons and other medical staff at the surgery center where she worked. It is believed to be the highest compensation for a victim of workplace harassment in U.S. history.

- (c) **Other Financial Cost**

SH cast a great financial loss to companies which comprises of cost incurred by companies on hiring and firing, training and development of ex-employees (victims or perpetrators), absenteeism, sick leaves, medical expenditure,

hiring and training of new employees. Even the constitution of committees to examine the complaints of SH cost management time and money.

- **Cost of Poor Productivity and Profitability of the Business**

SH has a detrimental effect on the efficiency, morale and productivity of the workers which negatively affects the productivity and profitability of the business (Siddique, 2003). A typical Fortune 500 corporation can lose up to \$14.02 million as a result of absenteeism, low morale and productivity, increased health-care and sick leaves costs, high employee turnover, excluding the costly litigation and monetary compensations for damages.

- **Cost of Toxic Organizational Culture and Compromised Team Work**

SHW creates a 'poisoned work atmosphere' for the rest of the workforce and has a damaging impact on the organisational culture. It builds a 'culture of violence' within the organisation that develops feelings of annoyance and distrust and has adverse impact on the attitude of the victim toward co-workers and supervisors (Gruber and Bjorn, 1982) and others with whom they interact at work which directly affects the professional relationships at the workplace. A workplace environment deficient in trust and team spirit impedes progress and innovation within the company. People may be reluctant to work in groups or teams which may jeopardize the team work spirit within the organisation which leads to low productivity and increased team conflict which might also pose a big challenge for successfully accomplishing business goals on time.

- **Cost of High Rate of Absenteeism**

Absenteeism is a symptom as well a consequence of SH because of the stress a victim experiences due to issue being unresolved, or the fear of being harassed again can either cause psychological illness, or encourage employees to stay away from workspace (Judd, 2009). Repeated SHW episodes can create hostile work environment and affect health and well-being of employees leading to absenteeism and increased labour turnover (Frame, 2004).

- **Cost of High Turnover and Staffing Problems**

Employees are less likely to stay in a toxic environment, and research suggests that employee turnover is one of the largest costs associated with SH (Merkin & Shah, 2014). It's no doubt an expensive ordeal for companies for losing a member of their staff, someone they've invested, and adding an additional cost of substituting them, which typically involves 20-30% upsurge in salary. A Corporate leavers survey (2007), estimated that the cost of employee leaving solely because of workplace unfair policies by U.S. employers and the replacement cost of more than two million professionals and managers to be \$64 billion on an annual basis, is almost equal to the collective revenues of Google, Goldman Sachs, Starbucks and Amazon.com in the fiscal year 2006 or amounts to the 55th wealthiest country in the world based on Gross Domestic Product (GDP). This survey further reveals the hidden costs of company's bad reputation that, 58 percent of employees who witnessed "unfairness" in the workplace and left jobs would "to some degree" discourage potential customers and desiring job applicants from joining the company.

- **Ripple Effects**

Researches (Richman-Hirsch & Glomb, 2002;) suggest that employees that have been merely spectators or bystanders to observe harassment of female colleagues also were more likely to have negative outcomes. There is decline in physical and psychological well-being, higher job burnout; lower job satisfaction resulting into weak organizational commitment, greater turnover intention (Miner-Rubino & Cortina, 2007), compromising team work, economic losses and hindering development.

- **Costs of Negative Public Image and Bad Reputation in the Market**

It is irrefutable that all enterprises principally run on its goodwill. With the rise of social media and never-ending media debates over harassed victims publicly naming and shaming the alleged perpetrators with their employers and incessantly media lynching at even the mere conjecture of a SH case can tarnish a company's public image in market. Companies have to pay a hefty amount of money to defend their brand image especially those who are involved in SH litigation law suits have to pay cost to media and other sources also to minimize their public exposure, so that their name does not make it to the news headlines in a negative light. Once the adverse publicity sticks to a company's reputation, it's Bad for Business. Uber's fiasco is a case in point.

- **Cost of Low Labour Force Participation Rate for Women**

India's Women's labour force participation rate (WLFPR) in 2017 was found to be one of the lowest in the World, as 28%, which is much lower in comparison to 82%, male participation rate in Indian workforce. World Bank recorded an appalling figure of over 21 million drop out of women out of rural workforce and almost two million women

joining the urban workforce in India between 2005 and 2012. So, if the number of women who leave jobs in India between 2004-05 and 2011-12, was contemplated as a city, it would be having a population of 19.6 million people, making it the third-most populated in the world, after Shanghai and Beijing (Andres et al, 2017). A toxic workplace environment has been perceived by women as one of the most deleterious and ubiquitous impediment behind increasing Gender gap in labor force participation rate which is a key factor of women empowerment. This form of violence at workplace not only has negative effects on their health, psychological state and interpersonal relations but also hampers their career motivation, productivity, satisfaction and longevity. It perpetuates unhealthy socio-cultural attitudes of domination and oppression against women and stunts all future prospects for diverse and inclusive growth. Thereby, neglecting one half of total population will only prolong India's status as a 'developing country'.

- **Cost of Gender Inequality to Social & Economic Development of the Country**

Gender inequalities are a burning moral and social concern and at the same time a critical economic challenge which hinders half of the world's workforce in achieving full economic potential there by affecting the global economy. SHW, like other forms of violence, is not harmless. It involves serious health, human, economic and social costs, which are exhibited in the overall development indices of a nation. According to a study by the McKinsey Global Institute (2015), presently women contribute only 17 percent to the country's GDP, which is quite below the global average of 37%. India has a larger relative economic value at stake from advancing gender equality than other countries. With increasing women participation in the economy at par with men, India could add \$700 billion of additional GDP in 2025, elevating the country's annual GDP growth by 1.4 percentage points.

4. Cases:

All the above mentioned factors can lead to the inevitable breakdown of a company. Few eminent cases will testify to that:

- (i) **UBER (2017)**

Globally, US cab-hailing firm Uber Technologies Ltd has been embroiled into 47 SHW cases after a former engineer went public with her story of SH, sexism and discrimination by management and repetitive rebuffs from the HR department which exacerbated the #DeleteUber campaign that cost the company \$703 million and a consequent exit of its CFO. Since there is a 'high cost to a bad reputation' in market, London's transportation regulator found Uber not "fit and proper" to operate in the city and opted not to renew the company's license and ban it in London. Uber lost one of the biggest markets comprising approximately 3.5 million users and around 40,000 licensed drivers and may even lose more if this not starts some sort of domino effect across the Europe. Uber has been trying to do damage control since then – and finding it quite tough to crawl out of the pit with so many lawsuits still pending. Therefore the outcomes of bad reputation are extensive and irretrievable, impacting how all stakeholders, customers, shareholders and executives, respond to the organisation.

- (ii) **FOX NEWS (2017)**

Twenty-First Century Fox Inc has reached a \$90 million settlement of shareholder claims arising from the SH scandal at its Fox News Channel, which cost the jobs of long-time news chief Roger Ailes and anchor Bill O'Reilly. Fox News paid \$13 million to five women who worked at or appeared on Bill O'Reilly's show, which led to dozens of advertisers boycotting his program and brought a slew of negative attention to the company.

- (iii) **FORD MOTOR COMPANY (2017)**

Ford Motor Co. agreed to pay up to \$10.1 million to settle racial and SH claims with the Equal Employment Opportunity Commission (EEOC) after an investigation at two Chicago-area plants. Ford said in a statement that it "chose to voluntarily resolve this issue without any admission of liability with the EEOC to avoid an extended dispute," and is committed to a "zero-tolerance, harassment-free work environment" at all its facilities.

- (iv) **THE YOGA STUDIO (2017)**

Bikram Choudhury, an Indian-American Yoga Guru and founder of Bikram Choudhury Yoga Inc. and Bikram Yoga College of India, was accused of SH and assault by his yoga practitioners, students, instructors and teacher trainees amounting to \$50 million SH claim, which led to an absolute shutdown of his million-dollar company. Bikram Choudhury filed for US Chapter II bankruptcy in the midst of more than \$16 million of debt following years of SH and assault lawsuits.

- (v) **ISG NOVASOFT TECHNOLOGIES (2016)**

Gayathri Balaswamy, was appointed as Vice-President of the company. Within a few months, she resigned and lodged a criminal complaint against two officers of the company. The Arbitrator passed a monetary compensation of

Rs. 2 crores together with interest at 18% per annum. Further Hon'ble Madras High Court awarded an additional compensation of Rs.1.6 crore for non-constitution of the Internal Complaints Committee (ICC).

(vi) WIPRO (2016)

India's third largest software exporter Wipro, with more than 160,000 employees worldwide was slapped with a 1.2 million pounds lawsuit by a former employee Shreya Ukil, who alleges that she was subjected to a "deeply predatory, misogynistic culture" at Wipro. She had faced SH by male colleagues in London and was also subjected to gender discrimination, unequal pay and unfair dismissal. She also claims that she was manipulated into an affair with married senior vice-president Manoj Punja, the former head of Wipro BPO.

(vii) INFOSYS & IGATE (2002, 2013)

In 2002, Phaneesh Murthy, who was Global Sales Head with Infosys, India's second-biggest software services exporter, was accused of SH and wrongful termination of employment by his executive secretary, Reka Maximovitch, which costed Infosys \$3 million as legal settlement. In May 2013, Murthy was sacked from iGate again for SH and not disclosing his relationship with the company's investor relations head Araceli Roiz. The company settled the case out of court by a one-time charge of \$4.6 million for legal settlement.

(viii) TEHELKA (2013)

Tarun Tejpal, the firebrand founding editor of the investigative journalism magazine Tehelka, was accused of sexually assaulting a young female colleague in a hotel lift during a festival in Goa. He was arrested on November 30, 2013 by the Crime Branch after his anticipatory bail plea was rejected by the court. His case is still pending in the court. Tehelka faced a downfall since then with poor sales and loss of regular readers etc.

5. CONCLUSION:

SHW in the workplace comes at a very heavy price which is damaging and cannot be calculated just in monetary terms. Therefore, organizations must be made aware of the scale and severity of the problem and its implications both for individuals and their work performance, and the long-term organizational benefits of combating SH (Stockdale, 1991). Every business has a socio-legal obligation to protect and preserve human rights at workplace and work towards achieving sustainability in development goals. Creating a safe and secure workplace free from SH and other forms of violence across all sectors and all over the country, is not only the right step in that direction but also a smart decision towards achieving a socially and economically developed Nation.

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