REPORT

E- LISTENING CIRCLE
SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

MARTHA FARRELL FOUNDATION

Date - April 4th 2020
Venue - Online
SETTING THE CONTEXT

With the Covid-19 lockdown pushing everyone back in their homes, the concept of “work from home” or “WFH” has gathered much attention. Data from BSE indicates that looking at a pool of 100 companies for FY19, a 14% rise from the previous year in sexual harassment reporting was observed based on an analysis of their annual reports. The countrywide lockdown begs a novel question in today’s evolving scenario given that women’s workplace has now become their home and vice versa, that is, what is the relevance of Sexual Harassment at the Workplace (SHW) in such a scenario. MFF hosted its first E-listening circle to initiate a space for people to share their ideas and experiences about SHW in such volatile times. The overall goal of this open forum was to empower people who are now working from their homes to understand what forms of sexual harassment can they face in a virtual workspace, to comprehend what can constitute sexual harassment in such a scenario and to recognize that even though their offices are working on a remote basis temporarily, organisational commitment for ensuring the safety of female employees does not cease.

In India the Internal Committees (IC) and the Local Committees (LC) are mandated by The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“the Act”) to function permanently and actively serve in prevention, prohibition and redressal of sexual harassment at the workplace.

Nandita Pradhan Bhatt facilitated the Listening Circle on Zoom with over 45 participants plugged in from all over the world of different age groups and a wide range of professions including lawyers, students, members of civil society organisations, teachers, entrepreneurs, writers, journalists and house-wives. The session started with participants sharing their preliminary thoughts on Sexual Harassment at Workplace (SHW). Some participants stated that they had never experienced sexual harassment at their workplace, whilst others distinguished between extreme/overt forms of sexual harassment and more subtle forms of sexual harassment. One of the participants pointed out the broad scope of the definition of sexual harassment to “cover any situation which makes the work environment hostile for the woman by her colleague because of her gender”. It was also stated that sexual harassment can start off as a mere “joke” and then slowly turn into behavior which is more grave. To this extent, an interesting
point was made about how one can tell from their instinct when a joke or a gesture constitutes sexual harassment. It was also suggested that in India after Vishaka Guidelines\(^1\) were put in place, there was more attention drawn towards SHW but very little enthusiasm to make an actual change in the “workspace culture” so-to-speak. Nandita mentioned that sexual harassment is a behavior and everyone’s understanding of what behavior is acceptable differs according to their cultural and social values. It was also highlighted that it is equally important to fight this notion of the “problem-child” or “trouble maker”- that is, tags that are attached to women who make Complaints or raise their voice against discriminatory policies at their workplaces or sexual harassment specifically.

Many procedural aspects of filing a Complaint for SHW are ambiguously laid down in the Act and are therefore unknown to most people. One survivor of SHW shared her painfully long and frustrating experience with filing a Complaint for sexual harassment with the Internal Committee (IC) of her previous workplace. She mentioned how in the private sector, the whole system was “designed for failure”. There were constant attempts to buy her cooperation, manipulate her and finally she was fired from the Company. She suggested that filing an F.I.R. with the police proved to be more effective for her but another participant cautioned about the delays that exist even in our criminal justice system. Another point of concern was regarding the training of Institutional Committees responsible for the prevention and redressal of sexual harassment in their workplace. It was common knowledge in the group that such committees are fearful of their employers or are unaware of their roles and responsibilities. In India such committees called the Internal Committee (IC) are in fact equivalent to the powers of a Civil Court in India. It was thus agreed that training such committees is the need of the hour as well as ensuring that they have quarterly meetings and play an active role to help women in their organisations. Further, in times of crisis such as the present scenario, committees must send emails to the employees of their organisations to reach out to them if they feel they are being sexually harassed by their colleagues in their present virtual workspace.

\(^1\) Vishaka Guidelines are the Directives passed by the Supreme Court of India in 1997 to provide safety to all women employees. It held the employer responsible for the same.
A second concern raised was who should be a member of such a committee? Should only those who have some prior knowledge of law and gender issues come on board or anyone should be allowed? The Indian Law on Sexual Harassment states that as far as ICs are concerned, apart from having a Presiding Officer- a senior woman employee who heads the IC, there are a minimum of three more people to be a part of the IC. Out of them, one is an external member from an NGO who is meant to be “committed to the cause of women”. As for the internal members of the Organisation, the Act states that they should “preferably” be committed to the cause of women or have some prior knowledge of the law. The aforesaid term “preferably” reflects the clear intention of the legislators of the Act to fully empower and equip the ICs to be powerful forums to access justice for survivors of sexual harassment at the workplace. The members are meant to be gender-sensitised before-hand and must have the skills to understand the nuances of the law on Sexual Harassment at the Workplace. They must be clear on the procedural aspects of conducting an inquiry, have a basic understanding of the law of evidence and be adept at writing reports. It is also important for the Committee members to understand that gathering evidence in case of SHW is an extremely difficult task for the survivor. There may be cases where there are few or no witnesses. They must view the survivor’s case from such a sensitized lens in order to get to the bottom of the truth. The same rules apply to LCs in terms of their training as well as their powers and responsibilities. For women working alone/consultant or in the informal sector, the only two legal remedies available are either going to the Local Committee of their District.

One pertinent point brought out was about holding institutional committees accountable. It was opined that these committees can give bad decisions for a variety of reasons such as being unaware of the law, being fearful of the consequences and being prejudiced against the survivor. To avoid this, it is important to vigorously enforce stricter monitoring and evaluation of the committees. Such steps will hold committees accountable for any negligence on their part while adjudicating cases of sexual harassment at the workplace.
Today, if our homes or our laptops and phones have become our workplace, the question that arises is can we still be sexually harassed? In what forms can we face sexual harassment in the virtual space? What laws will be applicable in such a scenario? Can we still file a Complaint with our Institutional Committees? How will the Inquiry take place and what are the responsibilities of our employers in this context? These are some of the questions that will be discussed in the upcoming webinars in the next few weeks being hosted by Martha Farrell Foundation.

Sharing their final thoughts on the subject, one of the participants reflected that she would ask her mother who is a member of an IC whether she was actively pursuing the Committee’s roles and responsibilities while another participant encouraged the men to participate more in such discussions. The participants enthusiastically mentioned how they were looking forward to opening a more comprehensive dialogue on the subject.