

Sexual Harassment at the Workplace Bill: Justice or a cruel joke?

Amrita Nandy

Dec 08, 2010

The Protection of Women against Sexual Harassment at the Workplace Bill 2010 has overlooked a wide range of issues, argues Amrita Nandy. Not only does it exclude domestic workers from its ambit, it proposes to penalise women who fail to provide evidence for “harassment”, which is often hard to provide.

New Delhi: "Please do not talk to Manju about the incident. Although it happened nine months back, she has still not recovered," cautioned Sunita, 46, a domestic worker, while referring to her niece who survived a sexual assault attempt by her ex-employer's 24-year-old son. This happened four months after Manju, 19, left her village in the tribal belt of Chhattisgarh for her first job ever as a housemaid in Delhi. "Manju ran away from that house. She reached me in a hysterical state. I was shocked to know what she had experienced. When I confronted Manju's employers, they refused to believe me and instead called Manju and me whores, physically pushing me out of the house. The police did nothing to help. Who should I go to?" asked an angry Sunita. Scores of domestic workers like Sunita rallied at Delhi's Jantar Mantar recently to raise this question. Unfortunately, the Protection of Women against Sexual Harassment at the Workplace Bill 2010, that is awaiting enactment in Parliament, offers them neither an answer nor any redress.

Recently cleared by the cabinet, the Bill is a long anticipated and much-needed measure to ensure women's safety in the workplace. The Bill bases its comprehensive definition of sexual harassment on the Supreme Court's Vishakha versus State of Rajasthan case (1997) and covers both private and public workplaces, including categories like students, research scholars, patients, and so on. But while women's groups, feminists and lawyers had engaged with the draft version of the Bill several years ago when it was with the National Commission for Women, the version that will become the law of the land betrays their efforts, given serious conceptual flaws that curtail its scope and efficacy.

"The most glaring slip is the exclusion of domestic workers from its ambit."

The most glaring slip is the exclusion of domestic workers from its ambit. As is widely known, there are millions of female domestic workers who toil each day for unaccounted hours (and this is another kind of abuse) in middle and upper middle class homes in Indian cities and towns all over the country. The nature of their work in the privacy of homes makes them most susceptible to all kinds of exploitation, particularly sexual. They are poor and

often ignorant of their rights and sometimes even about what constitutes sexual harassment. Of all workers that the Bill describes, it is this segment that most deserves 'protection', to use the patronising word in the title of the Act.

Madhu Mehra, Director, Partners for Law in Development, a Delhi-based legal resource group that works on issues of social justice and women's rights, says, "The Vishakha judgement gave the invisible crime of sexual harassment a name and forced the state to acknowledge its widespread presence more than a decade back. Yet, people pretend as if it does not happen. For some, it only happens in the sexualised workplaces of airlines, hotels, and so on. The farm workers, the construction worker are rarely imagined as workers whose rights need protection. How can we be blind to the Indian reality where poor girls start their working lives during their teens and in the most vulnerable of situations? Positioned at the most underprivileged crossroads of caste and class, they are unlikely to keep speak up against crimes."

However, it is not just the poor, illiterate domestic worker who the Bill will neglect. London-educated Priya, 27, remarks how her case of harassment too would fall between the cracks of the new Bill. Priya quit her job after a humiliating experience at a Mumbai-based advertising firm she worked for. "I was asked by the director to prove the sexual favours that my supervisor had verbally demanded from me! This Bill asks for evidence of acts that often would be done in an implicit or clandestine manner. Besides, if I do not prove harassment, I could be prosecuted! Is this a promise of justice or a cruel joke?" asks Priya.

"If I do not prove harassment, I could be prosecuted! Is this a promise of justice or a cruel joke?" asks Priya.

The Bill's provision to penalise women for 'false' complaints has come under attack. As the earlier examples bear out, certain forms of sexual harassment cannot be proven beyond reasonable doubt as may be possible with physical injury or other crimes. In such a situation, it is very unfortunate that the lack of proof of a crime makes the complainant liable for punishment. To label a charge with no proof as weak, or as bogus or fake, is insulting to the woman. In the subjective location of the workplace, sexual harassment would more often than not be concealed in vague words or actions pregnant with covert meaning. To expect the victim to either be able to establish the painful and insulting act or be ready for penalties for false charges may deter harassed women from seeking help rather than deter men from misbehaving with women workers.

Besides, the false complaint clause pre-supposes that women will file wrong cases to settle scores with male seniors or colleagues. However, it must be kept in mind that in a society where 'honour' is a woman's most prized asset, women think a thousand times before placing themselves in the public eye over an issue with sexual underpinnings. The fear of being tainted with allegations over her 'loose' character and conduct often forces harassed women to hush up such misdeeds. In fact, as is well known through police records and surveys, women often prefer to keep silent about a range of crimes committed against them, whether it is domestic violence or dowry harassment. So while the chances of women filing false cases will continue to be slim, the chances of women not being able to prove harassment and thus being penalised for a 'false' complaint may be

more likely. Mehra terms this a "chilling provision where a woman could be punished doubly if she lies about a crime that she as an ideal - coy, virtuous and feminine - woman should ideally be hiding". There already exists in law a general perjury provision, but to specifically use it against women reeks of a misogynist culture that punishes a woman who dares to seek justice.

According to the Workplace Sexual Harassment survey conducted by Centre for Transforming India, a non-profit organisation, among 600 female employees working in the IT sector across India, as many as 50% women reported to have been subjected to abusive language, physical contact or had superiors seek sexual favours; 47% female employees did not know where to report sexual harassment and 91% did not report for fear of being victimised. That a victim fears reporting a crime speaks volumes of the realities of women's lives. To add a clause of prosecution for women in the Bill is a definitive strategy to strengthen women's fear and ensure silence.

An effective law could have been a powerful tool in the hands of millions of women in India to take on sexual marauders in the workplace. Unfortunately, that promise has been belied in the present Bill.

LINK: <http://southasia.oneworld.net/peoplespeak/sexual-harassment-at-the-workplace-bill-justice-or-cruel-joke#.Uaxp59KSDjE>