

Case study – SH Complaint from a woman, impacted indirectly

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Work From Home (WFH) is propelling new dimensions in Sexual Harassment complaints. The Pandemic Covid-19 has altered WFH – a type of job performance – earlier which was an “option”, became “mandatory” now, in many organizations.

We have discussed as many fresh sort of incidents, befalling during performance through WFH, in the previous blogs.

In this blog, I wish to discuss about another incident, which was rare in a common workplace. In a just completed discussion with one of my friend, who is an HR (also an IC member) with an ITES establishment, we discussed the following incident which is an eye opener to Male Employees and to Internal Committee. Employers also need to be aware of such situations, which becomes an incident.

During one of the Virtual team meeting, there are around 2 female employees and 5 male employees were reviewing a project deliverables.

One of the male employee was a referral candidate (and a close friend) of a female employee, who was fortunately working in the same team and participating in the discussion. Nothing happened during his initial conversation, but after 2-3 minutes, his behaviour towards the female employee becomes objectionable. He started commenting (passed lewd comment) on the female employee, which was irrelevant to the discussion subject and also distasteful.

As the dialogues were enjoyed by the other male team members and the female employee (who was his friend), just skirted his comments and moved on.

But the other female employee, was deeply upset with the comments took the matter to Internal Committee. She made an immediate complaint to an IC member, detailing the incident and marking all participants of the discussion, as witness.

As per the statement in the Complaint, she had registered her displeasure during the meeting, stating that she felt so uncomfortable, irrespective of such comments told to another female colleague, which is unacceptable and offensive.

The Internal Committee members have started deliberations whether to accept the complaint and proceed with an inquiry or not.

When the HR friend wants to know whether this complaint can be treated as Sexual Harassment complaint under the Act, I immediately asserted that it is a classic “Sexual Harassment” complaint which is sustainable and needs to be accepted.

Following definition of Sexual Harassment, was explained to the HR friend highlighting how the incident is considered as sexual harassment

*As per Section 2(n) of the Sexual Harassment of Woman 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,*

- a) Physical contact and advances; or*
- b) A demand or request for sexual favours; or*
- c) Making sexually coloured remarks; or*
- d) Showing pornography; or*
- e) Any other **unwelcome** physical, **verbal** or non-verbal conduct of sexual nature;*

The comments were made in a group, and if the comment being felt uncomfortable to any of the group member (female employee), she has the right to complain. It is a sort of hostile working environment, involving uninvited and unwelcome behaviour.

During the discussion, even if the comments passed on the female colleague is friendly in nature, the other party (other female employee) has felt uncomfortable with the behaviour. The male employee, should have the responsibility of understanding that different people have different feelings for the same behaviour. One should not assume that his behaviour will be acceptable to “all others” in a group, when he was passing comment only on his friend.

Employers should take responsibility of informing the Reporting Manager / Supervisors that even mild to moderate sexual jokes or statements can create an atmosphere of hostility that will make some employees uncomfortable, and could lead to the creation of a hostile work environment.

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