

ATHENA LEGAL UPDATE ON
THE LEGAL PERSPECTIVE OF MENTAL HARASSMENT



ATHENA LEGAL

ATHENA LEGAL

CONTACT DETAILS

37 Link Road, First Floor, Lajpat Nagar-III,

New Delhi-110024

PH: 011-42004400/42004422

Email: correspondence @athenalegal.in

ATHENA LEGAL UPDATE ON **THE LEGAL PERSPECTIVE OF MENTAL HARASSMENT**

The term '**Harassment**' is a form of discrimination. It includes any unwanted physical or verbal behaviour that offends or humiliates you. It covers a wide range of behaviours of an offensive nature. It is commonly understood as behaviour that demeans, humiliates or embarrasses a person, and it is characteristically identified by its unlikelihood in terms of social and moral reasonableness. Such behaviour affects the physical and mental well-being of a person.

In the legal sense, these are behaviours that appear to be disturbing, upsetting or threatening. They evolve from discriminatory grounds, and have an effect of nullifying or impairing a person from taking benefits of their rights. When these behaviours become repetitive, they can also be construed as bullying in common parlance. The continuity or repetitiveness and the distressing, alarming or threatening nature may distinguish it from a mere insult or admonishment.

Categorization of Harassment

Harassment can take many forms and some of the most common types of harassment are: -

- 1) Mental Harassment
- 2) Physical Harassment
- 3) Discriminatory Harassment
- 4) Sexual Harassment
- 5) Harassment based on race, gender or religion
- 6) Emotional or Psychological Harassment
- 7) Cyberbullying or Online Harassment

In this update we shall analyze the legal position with respect to the issue of Mental Harassment. Before we elaborate further, one must understand that mental harassment is correlated to other forms of harassment as categorized hereinabove, hence a person who is a victim of any other form of harassment can also claim to be a victim of mental harassment at the same time.

Legal Analysis of Mental Harassment:

Certain rights are inalienable from a human being and are guaranteed by birth. The Protection of Human Rights Act, 1993 defines human rights as the rights related to the life, liberty, equality and dignity of the individual which are guaranteed by the Constitution or embodied in various International Covenants which are enforceable in the Courts in India. Right to live with dignity forms a part of human rights and any form of harassment amounts to breach of the right to live with dignity.

Below are few Indian laws which deal with various forms of Harassment:

1. **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.**

This was the first legislation enacted to protect the women from being sexually harassed at work place. The legislation has defined the term sexual harassment under section 2 and gives an inclusive definition stating that sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- physical contact and advances; or
- a demand or request for a sexual favour; or
- making sexually coloured remarks; or
- showing pornography; or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

The law mandates certain practices which workplaces ought to follow to prevent sexual harassment and mechanisms which need to be created for redressal of complaints.

2. **Indian Penal Code, 1860.**

The term “Mental Harassment” has not been specifically defined under the Indian Penal Code, 1860 (IPC), however harassment can be interpreted in terms of cruelty or torture. The relevant sections are as follows: -

A. **Section 294: Obscene acts and songs:**

Whoever, to the annoyance of others

- a. does any obscene act in any public place, or
- b. sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

B. **Section 354: Assault or criminal force to woman with intent to outrage her modesty.-**

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

C. **Section 354A. Sexual harassment and punishment for sexual harassment.**

- 1) A man committing any of the following acts-
 - i. physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. a demand or request for sexual favours; or
 - iii. showing pornography against the will of a woman; or
 - iv. making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

- 2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
- 3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

D. **Section 498A: Husband or relative of husband of a woman subjecting her to cruelty** - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation —For the purpose of this section, “cruelty” means—

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

E. **Section 509: Word, gesture or act intended to insult the modesty of a woman.**—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

3. **Information Technology Act, 2000**

This law aims to give legal recognition to online transactions and also deals with various acts and offences which may be committed online:

- A. **Section 67: Punishment for publishing or transmitting obscene material in electronic form.-** Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.
- B. **Section 67A: Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.-** Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Judicial Precedents:

Few of the cases that the Indian courts have dealt with in regard to Mental Harassment in a professional sphere are as follows:

1. **Vishaka & Ors. vs. State of Rajasthan (AIR 1997 SC 3011): Decided on August 13, 1997.**

This is a landmark judgment in the history of sexual harassment which has been decided by the Hon'ble Supreme Court of India. Sexual Harassment means an uninvited/unwelcome sexual favor or sexual gestures from one gender towards the other gender. It makes the person feel humiliated, offended and insulted to whom it is been done and completely destroys its mental peace causing a greater level of mental harassment as well.

Sexual harassment is one of the social evil faced by the fragile portion of the society. The court observed that the fundamental rights under Article 14[2], 19[3](1)(g) and 21[4] of Constitution of India that, every profession, trade or occupation should provide safe working environment to the employees. It hampered the right to life and the right to live a dignified life. The basic requirement was that there should be the availability of safe working environment at workplace.

The Hon'ble Supreme Court held that, women have fundamental right towards the freedom of sexual harassment at workplace. It also put forward various important guidelines for the employees to follow them and avoid sexual harassment of women at workplace. The court also suggested having proper techniques for the implementation of cases where there is sexual harassment at workplace. The main aim/objective of the Supreme Court was to ensure gender equality among people and also to ensure that there should be no discrimination towards women at their workplace.

2. **L. Nagaraju vs. Syndicate Bank and Ors.: High Court of Andhra Pradesh: Decided on December 18, 2013.**

The Division Bench of the Hon'ble Andhra Pradesh High court went on to elucidate Mental Harassment and quoted the Indian Journal of Community Medicine (official publication of preventive & social medicine) in the Article "A cross sectional study in Coastal South India which defined "work place harassment" thus:

“Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment.”

The Hon'ble AP High court went on to add, *“Finally, we may thus state or define the work place harassment as follows: **Workplace harassment** is any type of unwelcome action towards an employee by the employer or anybody on his behalf that leads to difficulty in performing assigned tasks or causes the employee to feel he or she is working in a hostile environment. The harassment may be based on such factors as race, gender, culture, age, sexual orientation, or religious preference.”*

In general, there are several factors that must be present in order to workplace harassment to be recognised. **First**, the conduct must be unwelcome and offensive to the employee. **Second**, the employee must voice his or her objection to the behaviour, allowing the offending individual or individuals to correct their workplace behaviour.

Lastly, the conduct must be of such a nature that makes an impact on the ability of the employee to carry out his or her duties in an efficient and responsible manner.

Some forms of workplace harassment are more common than others. Unwanted sexual advances by peers or supervisors is the most often cited form of workplace harassment. Both male and female employees may be approached by someone in the workplace who either hint or directly state that compliance will benefit the employee in some manner, or at least help to ensure that employment will continue. Today, many countries have laws that protect employees of all genders from this type of harassment.

Workplace harassment may also take the form of prejudiced remarks or tasteless jokes that have to do with an individual's personal beliefs, age, or sexual orientation. While harassment of this type is widespread in many offices and other workplaces, employers are beginning to take a more aggressive stance on slurs, name-calling and veiled threats that target employees for any of these reasons. In addition, more countries are expanding harassment laws to include irresponsible remarks and various forms of intimidation that have to do with age, religion, and orientation.”

Although, in the instant case, the Hon’ble Court could not find enough evidence against the Respondent on the charge of Office Bullying or Mental Harassment and thus dismissed the Appeal, however the Hon’ble Court has very clearly explained what amounts to Mental Harassment.

Maintaining a Healthy Corporate Environment:

In order to ensure that harassment does not occur in office premises, managements should ensure that following actions to not occur or are minimised at work place:

1. **One person is given preferential treatment**
One person in the work group is receiving preferential treatment like top projects, travel perks and free time. Meanwhile, the other person finds that most of his requests along the same lines are denied without reasonable explanation.
2. **One’s progress goes unseen:** Say you’ve been given a directive with certain objectives, an ultimate goal and a deadline. You work hard and with focus only to find out, that suddenly there’s a change in direction on the project. Your progress is not celebrated or applied to the new project, but not even taken into account. This can lead to mental harassment.
3. **All your decisions are questioned:** There can be a situation where one person is constantly bombarded by excessive micro-managing. He doesn’t feel like his intuition or decisions are being trusted, and he can’t explain why. He gets the sense that he is

wrongly perceived as incompetent and his decision-making capability is greatly reduced as a result.

4. **You are socially alienated:** All of a sudden, one person is excluded from meetings he once attended. His colleagues tend to discuss work prior to his arrival and he is left with absolutely no clue what to do. Besides, he is not marked on important mails. Co-workers tend to avoid him and keep interaction to a minimum. He may also find that he is no longer invited to post work drinks with his teammates.
5. **Your health is failing:** Mentally, that person is drained and his energy is zapped. He is sleeping more and getting out of bed is a real task for him. Exercising and socialising with his friends is a chore. Bullying can lead to depression, anxiety, panic attacks and mood swings. There are physical symptoms such as increased blood pressure, rapid heartbeat, and loss of appetite (or excessive eating).
6. **Have experienced verbal spat:** When a person is subjected to negative, abusive language -reprimanded often in front of the entire office. Verbal abuse can also be more subtle than loud insults. That person may find that he is being joked around with in a way that makes him feel uncomfortable and small, and that too can be verbal bullying.
7. **Your work is publicly diminished:** The person's dedication to his job is not acknowledged by his boss or they give credit to others (for his hard work) in a public setting such as a meeting.
8. **Face unnecessary criticism:** It seems that in the eyes of the boss, that person is ineffective and unprofessional. Feedback is always provided in the form of criticism and delivered in a way to make that person feel awful about himself. There's no effort to provide guidance.
9. **Presented unreasonable obstacles:** If the boss purposely throws roadblocks in front of one person to prevent him from successfully completing a project is also a major act of bullying which is equivalent to mental harassment.

Besides the above the corporates should have an active, impartial and easy to approach grievance redressal mechanisms for employees and statutorily mandated committee under the POSH Act and Rules for redressal of sexual harassment complaints.

Legal Recourse to be adopted:

The answer to this question solely depends on the kind of mental harassment an individual is subjected to and these could include:

1. **Termination from Work:** If the person has been wronged professionally and has been terminated from the services without any reason or cogent evidence, the relief that the person can get from court is relating to re-instating of his services and allowing of wages to be given from back date.

2. **Violent Behaviour:** If the person has been subjected to violence as a consequence of mental harassment or feels that his peace has been hampered or bodily injury, a Complaint or an FIR can be registered and a criminal case shall be registered against the employer followed with sentencing.
3. **Late Wages or No Wages:** Mental Harassment in form of late wages, no wages or even equal pay for equal work can be claimed. Redressal in such cases can be granted by Labour Court if the victim approaches the Labour Court under the Industrial Disputes Act, 1947 or the Payment of Wages Act, 1936.
4. **Person with Disabilities or Other form of Discrimination:** Mental Harassment is a huge umbrella and can also be claimed by pregnant women and persons with disabilities. In such cases, remedy is provided under Maternity Benefits Act, 1961 which protects pregnant women from discrimination. Further, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 protects people with disabilities from discrimination.
5. **Sexual Harassment:** Gender discrimination and sexual harassment at work workplace is one of the most common forms of harassment faced especially by women at work place. India has legal provisions under the IPC and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which provide remedies for victims and also impose obligations on organisations to ensure safe working environment for women.

DISCLAIMER

The update is intended for your general information only. The information and opinions contained in this document are derived from public sources which we believe to be reliable and accurate but which, without further investigation, cannot be warranted as to their accuracy, completeness or correctness. It is not intended to be nor should be regarded as legal advice and no one should act on such information without appropriate professional advice. Athena Legal accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.