

# SEXUAL HARASSMENT AT WORKPLACE- A BARRIER TO WOMEN EMPOWERMENT

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## Abstract-

The topic titled as “**Sexual harassment at workplace- A barrier to women empowerment**” Sometimes people in authority misuse their power to harass women. There are many women who have faced sexual harassment at some point of time, maybe in the office or on her way to work. They're forced to keep quiet because if they make a noise about it they are subject to worse crimes like assault (grievous, indecent, etc.) and rape, acid attack, etc especially in India. Thus it's the employers' foremost responsibility and ours too, to develop absolute intolerance against sexual harassment at workplace and elsewhere respectively. We all know the wonderful & important role a woman plays in a traditional Indian family. She is a responsible homemaker and a soft hearted hard worker. She is also the 21st Century woman; independent, confident & making successful forward strides in many fields. But when there are so many crimes against women happening daily, so much gender inequality, sexual harassment and hostile environment at her workplace, does India really want to give her the freedom of equality & safeguard her fundamental rights? Or just expect her to compromise, stay down & back up like a woman is expected of in India?

**Key Words:** Sexual Harassment at Workplace, Gender Inequality, Fundamental rights

## INTRODUCTION:

*“Sexual harassment cases usually have a marked power imbalance between the victim and the accused; this may well affect the negotiation scenario, with the victim being unable to hold her own”.*

Sexual harassment of women is a global phenomenon. It is pervasive both in developed as well as in developing countries. Cutting across religion, culture, race, caste, class and geographical boundaries it has spread like virus in the society.

Sexual harassment of women at workplace, being offensive to human dignity, human rights and gender equality has emerged as a fundamental crisis the world over.

Human dignity and gender equality are universally considered to be not only fundamental human rights but also essential to sustain economic, social, cultural and political progress nationally and internationally. However, discrimination on the ground of sex and gender injustice in political, social, economic and cultural scenarios hampers the growth and development at national and international level.

The devaluation of women and social domination of men still prevails in India. Women are viewed as dowry burdens, the weaker gender and worthy of a lower Social status as compared to man. Because of

these factors besides myriad others, India has a very poor Gender Inequality Index apart from overall poor Human Development Index in 2013 UN Human Development Report<sup>1</sup>. India ranks 132 out of the 148 countries polled in Gender Inequality Index and 136 in HDI<sup>2</sup>. The Gender Inequality Index (GII) is a composite measure which captures the loss of achievement, within a country, due to gender inequality, and uses three dimensions to do so: reproductive health, empowerment, and labour market participation. According to a 1998 report by U.S. Department of Commerce, the chief barrier to female education in India are Inadequate school facilities (such as sanitary facilities), Shortage of female teachers and most importantly Gender bias in curriculum. In curriculum women being depicted as weak, helpless and gullible versus strong, adventurous, and intelligent men with high prestige jobs<sup>3</sup>. Thus women are discriminated socially, economically and even legally in today's India.

Sexual harassment in workplace is a serious irritating factor that renders women's involvement in work unsafe and affects right to work with dignity. It is unwelcome verbal, visual or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment. Generally sexual harassment is a sexually oriented conduct that may endanger the victim's job, negatively affect the victim's job performance or undermine the victim's personal dignity. It may manifest itself physically or psychologically. Its milder and subtle forms may imply verbal innuendo, inappropriate affectionate gestures or propositions for dates and sexual favours. However, it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.

To fit in the concept of sexual harassment the relevant conduct must be unwelcome. That is unwelcome to the recipient of that conduct. Conduct is not sexual harassment if it is welcome. So in order to determine if the conduct was welcome or unwelcome, courts would naturally look to the complainant's reaction at the time of the incident occurred and assess whether the complainant expressly, or by his or her behaviour demonstrated that the conduct was unwelcome. If the evidence shows that the complainant welcomed the conduct the complaint of sexual harassment would fail. For this reason, it is important to communicate (either verbally, in writing, or by your own actions) to the harasser that the conduct makes you uncomfortable and that you want it to stop.

However, before 1997, women experiencing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the criminal assault of women to outrage women's modesty, and Section 509 that punishes an individual or individuals for using a word, gesture or act intended

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<sup>1</sup> The Rise of the South: Human Progress in a Diverse World' - UN Human Development Report 2013, United 14th March 2013

<sup>2</sup> <http://hdr.org/en/statistics/gii>

<sup>3</sup> Victoria A. Velk off (October 1998). 'Women of the World: Women's Education in India' – U.S. Department of Commerce, U.S.A.

to insult the modesty of a woman. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer

#### Crimes against Women:

Even though women may be victims of general crimes such as robbery, murder, etc. only the crimes directed specifically against women are characterized as 'Crimes Against Women' against which several laws in the IPC (IPC 376, 363-373, 304 B, 498-A, 354, etc.) and special and local laws (ITPA 1956, DPA 1961, SHW (PPR)2013) are laid down. According to NCRB (National Crime Record Bureau) in 2012<sup>4</sup>, around 2.4lakh women had reported crimes against them i.e. at a national average of 41 per lakh population of women with the highest incidence in Assam of almost 90. Cruelty by husband and relatives formed nearly half of cases of crimes against women, whereas Sexual harassment in 2012 showed an increase of 7% since 2011 and accounted for 3.8% of total crimes against women. Reasons for vulnerability are shown here:

- Social & work pressures
- Due to lack of awareness of legislation.
- Economic vulnerability (some women are sole earners of their family, hence are subject to more harassment as their bosses know the reason of her silence)

#### Sexual Harassment at Workplace:

Sexual harassment at workplace hampers women's constitutional and fundamental rights to equality, justice and dignity. A variable range of behaviors is a major reason for difficulty while learning this concept, as even the victims themselves are unable to express their tragic sexual harassment moments. Thus there is no single definition which can define prohibited behavior.

#### Supreme Court guidelines on sexual harassment

The Supreme Court in **Vishaka vs State of Rajasthan**<sup>5</sup> for the first time recognized, acknowledged and explicitly defined sexual harassment as an – unwelcome sexual gesture or behaviour aimed or having a tendency to outrage the modesty of woman directly or indirectly.

Defining sexual harassment as an act aimed towards gender based discrimination that affects women's right to life and livelihood, the Supreme Court developed broad based guidelines for employers. This mandatory guidelines known as Vishaka guidelines are aimed towards resolution and prevention of sexual harassment.

<sup>4</sup> 'Crime in India 2012', Chapter 5, National Crime Records Bureau, Ministry of Home Affairs, Govt. of India, India.

<sup>5</sup> 1997 6 SCC 241

These guidelines bring in its purview all employers in organized and unorganized sectors by holding them responsible for providing safe work environment for women.

The Vishaka guidelines apply to all women whether students, working part time or full time, on contract or in voluntary or honorary capacity. Expressly prohibiting sexual harassment at work place these legally binding guidelines put a lot of emphasis on appropriate preventive and curative measures. (The guidelines include the following as acts of sexual harassment: Physical contact and advances, showing pornography, a demand or request for sexual favours, any other unwelcome physical, verbal/non-verbal – such as whistling, obscene jokes, comments about physical appearances, threats, innuendos, gender-based derogatory remarks, etc.)<sup>6</sup>

Some of the important guidelines are:

- The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps:
- Employers must form a Complaints Committee.
- Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings.
- Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules.
- Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers.
- Provision of appropriate work conditions in respect of- work, leisure, health, hygiene to further ensure that there is no hostile environment towards women.
- No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer<sup>7</sup>

Thus the Vishaka guidelines stipulated that all organisations would form a complaints committee to look into any such allegation. It would be headed by a woman employee and not less than half of its members would be women. All complaints of sexual harassment by any woman employee would be directed to this committee. The committee would advise the victim on further course of action and recommend to the management the course of action against the person accused of harassment<sup>8</sup>.

<sup>6</sup> <https://lawtimesjournal.in/vishakha-vs-state-of-rajasthan/>

<sup>7</sup> <https://www.lawctopus.com/academike/sexual-harassment-at-the-workplace/>

However, in *Medha Kotwal Lele vs. Union of India*<sup>9</sup> coordinator of Aalochana, a Centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.

The Court stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. The Court held that a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines<sup>10</sup>

These are some prominent cases, including the famous Bhanwari Devi Case which brought word Sexual Harassment into the Indian Legal scenario providing us with landmark Vishaka Guidelines.

1. Bhanwari Devi case<sup>11</sup>
2. Rina Mukherjee vs. The Statesman<sup>12</sup>
3. Rupan Deol Bajaj (IAS officer) vs. Super Cop K P S Gill<sup>13</sup>

Bhanwari Case<sup>14</sup>:

Sexual harassment hit the Indian legal map when Bhanwari, a saathin in Rajasthan, prevented the child marriage within an upper caste community. In doing so she was subjected to unwelcome sexual harassment

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<sup>9</sup> AIR 2004 S.C.W 7454

<sup>10</sup> Retrieved from: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/creating-safe-public-spaces#sthash.VzRS0b93.dpuf> on 1<sup>st</sup> February 2014 at 3: p.m.

<sup>11</sup> 1997 (1) WLC 42, 1996 (2) WLN 387

<sup>12</sup> 2014 (4) CALLT 190 (HC), 2014 (143) FLR 51

<sup>13</sup> (1995) 6 SCC 194

<sup>14</sup> Taisha Abraham (2002), "The politics of patriarchy and saathin Bhanwari s Rape" - Women and Politics of Violence, Har Anand Publications, ISBN 9788124108475.

through words and gestures from men of that community. When she reported the harassment, the local authority did nothing. That omission was at great cost to Bhanwari.

The feudal patriarchs who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and gang raped her repeatedly. After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- "educated and upper caste affluent men" – citing ridiculous reasons i.e. how can an uncle have sex in front of his nephew, etc.- were allowed to go scot free.

This enraged a women's rights group called Vishakha that filed public interest litigation in the Supreme Court of India leading to her victory & a landmark & visionary judgement in today's times by Late CJI J.S. Verma<sup>15</sup>.

Only after Sixteen years after this landmark Supreme Court judgement, the Government awoke from its slumber and introduced a defective Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act<sup>16</sup>

The reason it took so long could be because representation of women at the decision making centre is as follows: Women representation in Parliament (both houses) in India averages only 11.4% while Pakistan has a better women representation of 20.4%. Best women representation is in the parliament of Rwanda with 63.8% followed by Andorra with 50%<sup>17</sup>

- The Sexual Harassment at Workplace (PPR) Act 2013 has a total of VIII chapters which could be assessed at its official website and in brief is summarized: Chapter I deal with the preliminaries and definitions.
- Chapter 2 deals with complaint made
- Chapter 3 & 4 describes constitution of the committee
- Chapter 5 deals with inquiry.
- Chapter 6 & 7 with duties of the employer and district officer and the last chap deals with miscellaneous sections of the act

Conduct amounting to Sexual Harassment at workplace

### 1. Whistling at someone

<sup>15</sup> J.S. Verma C.J.I., Mrs Sujata V. Manohar and B.N. Kirpal J.J. - Judgement on 'Vishaka and others V. State of Rajasthan and others.' – AIR 1997, Supreme Court 3011)

<sup>16</sup> The Gazette of India, Extraordinary, Part II- Section 1, New Delhi, Tuesday, April, 23, 2013/ Vaisakha 3, 1935 (Saka), 'THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013, Ministry of Law and Justice.

<sup>17</sup> <http://www.nwmindia.org/articles/bengal-network-rina-mukherjis-case-against-the-statesman>.

2. Actual or attempted rape or sexual assault
3. Touching an employee's clothing, hair, or body
4. Kissing sounds, howling and smacking lips
5. Touching or rubbing oneself sexually around another person
6. Unwanted sexual teasing, jokes, remarks, or questions.
7. Unwanted deliberate touching, leaning over, cornering, or pinching.

## Harasser and the Harassed

*UNLIKE THE COMMON THOUGHT THAT SEXUAL HARASSMENT AT WORKPLACE IS LIMITED TO INTERACTIONS BETWEEN MALE SUPERIORS AND FEMALE SUBORDINATES, SEXUAL HARASSMENT CAN OCCUR BETWEEN ANY CO-WORKERS, LIKE,*

1. Subordinate harassment of a superior;
2. Same-sex harassment- men can harass men; women can harass women;
3. Men can be sexually harassed by women;
4. Offenders can be co-workers, supervisors, or non-employees as suppliers, customers, and vendors<sup>18</sup>

## Indian legal provisions for Sexual Harassment at workplace

- **Criminal case under sections of the Indian Penal Code (IPC)**

### 1. Section 294

Any obscene act or song done in public to annoy another is an offence- cognisable, bailable and triable by any magistrate, as prescribed in the provisions in Chapter XVI entitled "Of Offences Affecting Public Health, Safety, Convenience, and Morals."<sup>19</sup>

### 2. Section 354

When without the consent of the women, acts of physical attack or intentional force on the person of woman are committed to outrage her modesty, then the offender can be fined or sentenced to two years of imprisonment or convicted with both<sup>20</sup>.

<sup>18</sup> <https://blog.ipleaders.in/sexual-harassment-at-workplace/>

<sup>19</sup> Section: 294 of IPC, 1860 at Pg. no: 503

<sup>20</sup> Section: 354 of IPC, 1860 at Pg. No: 535

### 3. Section 509

As in Chapter 22 – “Of Criminal Intimidation, Insult and Annoyance”, commission of act, utterance of words intentional gestures to insult the modesty of a woman or hurt her privacy is an offence which is cognizable, bailable and triable by any magistrate and can be punished by way of fine or sentence upto two years of imprisonment or with both<sup>21</sup>.

- **Criminal case under the Indecent Representation of Women (Prohibition) Act, 1987**

Under Indecent Representation of Women (Prohibition) Act, 1987 if any person harasses another by an indecent portrayal of women in books, films, photographs, paintings, etc., can be convicted for minimum two years' sentence.

Further, Section 7 says that when found guilty on instances of an indecent depiction of women by way of pornography display etc. on the company premises will be charged with minimum two years' sentence.

- **Criminal proceedings**

Where any such conduct amounts to a specific offence under the IPC, the employer should initiate requisite measures in accordance with the law by making complaint with the appropriate authority. While dealing with sexual harassment complaints in particular, the employer should make sure that the victims or witnesses are not discriminated.

- **Filing a civil suit**

A civil suit for mental anguish, loss of income and employment caused by the sexual harassment can be instituted for damages under the law of tort.

### **Report of survey carried by CII**

CII (Confederation of Indian Industry) had carried out a survey on the topic ‘sexual harassment at workplace’ that covered 4,000 employees from four IT companies. Lack of awareness of laws and anxiety of getting a bad name were found to be the most common reasons why women avoided complaining about sexual harassment at workplace. A pilot survey in IT companies to assess the perception of their employees on women’s safety. The survey covered four IT companies, and was carried out following frequent cases of sexual violence against women. The survey included responses of over 4,000 employees. Based on the

<sup>21</sup> Section:509 of IPC,1860 at Pg. No:597



findings of the survey, CII organised a workshop for the corporate houses, human resources and individuals to create awareness against sexual harassment at workplace, its laws. Employees from six different work sectors, including manufacturing, services (IT, Financial Services, Banking, Insurance etc.), health care, hospitality, research establishments and education institutions participated in the workshop. Apart from lack of awareness about the laws against sexual harassment at workplace, the other problems that the working women face is of fear of earning bad name if they register a complaint. Some of the women also stated that they fear that they will be sacked or they will not have good appraisal if they raise voice against sexual harassment by a senior. The women also demanded strict action against the accused and compensation to the victims for the mental trauma. There should be a mandate that women employees should be provided with conveyance facility when going to remote places or even working late night<sup>22</sup>.

### SAFETY OF WOMEN:

Over the past three decades, workplace has become a much more diverse environment. With women representing 24.4 per cent of the total workforce in India, personal security has become central to their physical, intellectual, emotional, economic and spiritual well-being.

To quote Michelle Bachelet, first woman Special Envoy to the UN Secretary General, *“Gender equality must become a lived reality” and how better to do it than ensure that women are safe at the workplace, by creating an atmosphere conducive to increased participation of women, positively encouraging and supporting them*<sup>23</sup>.

### Recommendations are as follows: -

- To have a registering complaint and redressal mechanism
  - Gender sensitization and awareness
  - Confidentiality of complainants and witnesses
  - Aid to complainants through women’s cells, forums
  - Separate nodal body to address issues which are not addressed by company’s committee
- **Disciplinary Action**

Prescribed disciplinary actions must be initiated by the employer in accordance with the service rules, when dealing with acts amounting to misconducts in employment as defined in these rules.

<sup>22</sup> Retrieved from <http://www.dnaindia.com/pune/report-lack-of-awareness-main-problem-of-sexual-harassment-victims-1891656>

<sup>23</sup> <https://www.lawctopus.com/academike/sexual-harassment-at-the-workplace/>

- **Complaint Mechanism**

For redressal of the victim's complaint, an appropriate – time bound complaint mechanism must be established in the employer's organisation to decide whether the alleged sexual harassment act constitutes an offence under law or a breach of the service rules.

- **Internal Complaints Committee**

The above-mentioned complaint redressal mechanism must be competent to provide a special counselor or other necessary support service complaints committee in times of need. Also, owing to the sensitivity of the matter, strict confidentiality must be ensured.

The composition of the complaints committee must be not less than half female members of the total, which is to headed by a woman. Additionally, a third party involvement in the form of NGO or other bodies should be arranged to avoid senior level influence or undue pressure at any respect.

Annual reports of the filed complaints and concerned steps taken by the complaints committee must be submitted to the respective government department. Further, the employers must also report on the adherence to the prescribed guidelines, including on the reports of the complaints committee submitted to the government department. All of these are strict compliances a company must adhere to. Non-compliance could lead to a lot of repercussions including fines and loss of goodwill. You can learn more about sexual harassment at workplace by taking up this course<sup>24</sup>.

*The ministry of women and child development has published a handbook on Sexual harassment at workplace (prevention, prohibition, and redressal) act, 2013. The handbook<sup>25</sup> is considered valuable for employers, employees and complaint committees for proper guidance with regard to law and aims to safeguard the interest of women affected with sexual harassment at workplace.*

## **Precautions**

**Some important precautions to be taken up are as follows:-**

Last pick up and first drop with a drop closer to home for women, Vendor validation with instructions to vendors regarding the type of vehicles and drivers, GPRS Tracking on vehicles used to drop employees, Male

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<sup>24</sup> <https://courses.lawsikho.com/courses/online-course-how-to-implement-sexual-harassment-laws>

<sup>25</sup> <https://www.iitk.ac.in/wc/data/handbook> on sexual harassment of women at workplace.pdf

colleague should accompany female employees when going to secluded place, Assignments should not affect the employee's appraisal etc.

## CONCLUSION

Sexual harassment is a serious problem and the new act marks an important step in recognizing a concern that affects most women. But there is a need for courts as well as rights advocates to ensure that women's rights to equality in the workplace are not secured through the regulation of sexual conduct, muzzling of sexual speech, or moral surveillance of women's lives. Such strategies have historically only perpetuated sexual stereotypes, sexual orthodoxy, and compromised on women's fundamental rights. Workplace policies and codes must be drafted in a way that specifically recognises and respects an individual's right to sexual autonomy and bodily integrity. Sexual harassment must be effectively addressed in support of and not at the cost of women's fundamental rights as clearly set out in the preamble.

Whenever any law is drafted its always in its infancy, prone to many flaws and loopholes. These are some suggestions offered by the First author by her own personal experiences to counteract the loopholes.

1. Extensive research and debating on the issue to fill the legal loopholes.
2. Awareness on Sexual harassment has to be raised through Campaigns and presentations all over the country. Special days must be allocated.
3. Fast track courts should be set up to try such cases faster to avoid further harassment to family members especially the woman s children who face discrimination and insults later in life.
4. Strict laws for anonymity of the complaint and proceedings should be enforced.
5. Explicit protection of the victim and witnesses
6. Possibly do away with the concept of the Internal complaints committee as the harasser if in a higher position and power could easily influence the members of his own institution who form the internal complaints committee, which results in further harassment, mental torture and defamation to the victim. Local committees and police maybe a better option.
7. If Complaint committee is formed it should be of the comfort and possibly choosing of the victim so as to protect her from further suffering.
8. Legal counsel should be provided to the victim so as to see that the proceedings/ statements of the victim should not be misconstrued, manipulated and jumbled up to suit themselves or concerned parties due to corrupt practices to save repute of the Institution.

9. Media and persons attached to the media should be given strictest punishments if found guilty of leaking false information or the proceedings and more so if especially involved in the harassment.

10. Malicious statements made by those found guilty of harassment or aiding such people should be subject to strict and severe disciplinary action.

11. Students in educational institutions, especially postgraduate students, should be well protected by universities & higher institutions. These students frequently suffer sexual harassment from their thesis guides and bosses who know very well that if she complains, her thesis, educational growth and career prospects can be thrown down the drain.

These guides and bosses indulge in derogatory and cheap practices of providing false information about the victim to the examiners and other officials so as to lessen her chances of passing from the institution and thereby further subjecting her to FAILURE, humiliation, torture and ridicule resulting in several stress disorders and mental agony.

12. Ladies should also know that repetition creates a life pattern. So if you endure workplace conduct which sexually demeans, intimidates, offends, excludes and limits women, it's not only about the patterns of sexist behaviour, it is also about the repetitive nature of our own complacency. We have all become extremely immune to the pervasive harm of sexual harassment and its unconstitutional character. But this only revs up & encourages the harassment from men in different quarters towards our own sisters & possibly future generation of women<sup>26</sup>

Let's stand up and fight. It's in a woman's nature to be loving, caring and passionate, why not use these qualities to empower our other sisters. We have to muster courage and build up confidence to stand up & speak against harassment and for women empowerment and better overall treatment of women as shown by great legendary personalities like Justice K.S. Verma, Bhanwari Devi, Rina Mukherjee<sup>27</sup> and other countless brave men and women, our true heroes and role models.

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<sup>26</sup> jalt14i4p421.pdf

<sup>27</sup><http://www.nwmindia.org/articles/bengal-network-rina-mukherjis-case-against-the-statesman>.