

## **Sexual Harassment of Women at Workplace in India**

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### **Abstract**

Today's world is accustomed to the term Sexual harassment. Sexual Harassment can be identified as a behaviour. Sexual harassment at workplace is a universal problem which is kind of violence against women in the world whether it be a developed countries or a developing country. Since the early 1980's sexual harassment at workplace has remained a main issue in India. Sexual harassment in the workplace is a widespread and distressing issue that impacts people in all walks of life and all types of careers. Victims of sexual harassment often experience negative consequences such as decreased job satisfaction, increased stress, and a diminished sense of self-worth. Sexual harassment is one of the major problems which play a bad role by discouraging women in taking active part in economic and social development. International community has recognized in their international treaties and documents the free from sexual harassment as a human right of women. It's important to understand the scope of this issue and to work together to prevent sexual harassment in the short and long term. Employers have a responsibility to prevent as well as address sexual harassment in the workplace through implementing clear policies, training employees on appropriate workplace behaviour, and taking appropriate action when harassment is reported or observed. Later, India passed legislation to prevent sexual harassment, such as "The Protection of Women Against Sexual Harassment at Workplace Bill, 2010" and "Sexual Harassment of Women at Workplace Act, 2013," which were meant to stop this kind of sexual harassment of women, and "Criminal Law (Amendment) Act, 2013, which included section 354A IPC, 1860", which defined sexual harassment and set a penalty of 3 years in prison with or without a fine In India till the Vishakha judgment came there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination

Against Women (CEDAW). This paper discusses the Protection of Women from Sexual Harassment at Workplace, types, reasons, Act, Law and how organisations can help to women maintain dignity.

**Keywords:** Sexual harassment, awareness, verbal harassment, psychological harassment, digital harassment, physical harassment.

## I. INTRODUCTION

Today's world is accustomed to the term Sexual harassment. Sexual Harassment can be identified as a behaviour. Sexual harassment at workplace is a universal problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities and cruelties against women is common everywhere. It is seen to be happening more with women gender as they are considered to be the most vulnerable section of the society these days. Sexual harassment therefore is a serious problem in the workplace and it has become one of those issues that receive a lot of negative attention. Indian Constitution provides right to equality to both women and men. Women have equal right to choose any profession and area of work or business activity. But in practice women are discriminated against both in their homes and outside their homes. Sexual harassment is a serious offense and is more common than you might think.

According to a McKinsey survey, 35% of female respondents have experienced sexual harassment in the workplace. Moreover, it's a prevalent crime that is not exclusive to women. Anyone can be a perpetrator or victim of sexual harassment. Sexual harassment includes unwanted sexual advances, such as inappropriate touching, sexual jokes, sharing pornography, sending sexual messages or requiring sexual favours in exchange for a promotion or job security. Although defining sexual harassment may seem straight forward, it is not always so obvious. "Sexual harassment in the workplace is seldom egregious," Chancey said. "Most of the time, it is masked in mild banter, inoffensive comments that are accompanied by sexual gestures or tones, or awkward but seemingly innocuous statements that portray people of a certain gender usually women in a negative light."

### **Sexual Harassment at Workplace**

In simple terms it can be understood as unwanted direct or indirect sexual contact, remarks or conduct on part of the male colleagues against their women colleagues at any workplace. Thus, sexual harassment at workplace includes both physical as well as mental aspects. The Supreme Court of India defined it in the case of Vishakha v. State of Rajasthan, 1997, the Sexual Harassment at workplace as any unwelcome sexually determined behaviour (whether directly or by implication) such as;

1. Physical contact and advances

2. A demand or request for sexual favours
3. Sexually colour remarks
4. Showing pornography
5. Any other un welcome physical, verbal or non-verbal conduct of sexual nature.

The international instruments define Sexual Harassment as “violence against women and discriminatory treatment which is a broad definition compared to the national laws. National laws focus on the illegal conduct more.

Every country is facing this problem daily. No female worker is safe and the sense of security is lacking in them. There are certain developments in laws of many countries to protect women workers from Sexual Harassment.

### **Harasser and Harassed**

It is commonly thought that workplace sexual harassment is limited to interactions between male bosses and female subordinates. This is not true. In fact, sexual harassment can occur between any co-workers, including the following:

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

### **History of the Act**

The problem of sexual harassment of women is not a new development; it has been a part in every women’s life an older phenomenon of showing the dominance of men in the society. Sexual harassment is one of those problems which play a bad role by discouraging women in taking active part in economic and social development. It is a demanding and offensive experience one employee can suffer and it is gaining recognition whether it be at workplace or an institution or at home. Civil Society claims 70% of women have had sexual harassment experience.

Since the early 1980’s sexual harassment at workplace has remained a main issue in India. In 1980’s the Forum Against Oppression of Women took action against the sexual harassment of nurses in public and private hospitals by doctors, patients and their male relatives, other staffs, teachers by colleague’s principals, students by teachers, professors and other staff. But nothing stopped the women activists and social workers who tried to bring all cases to public and who also fought sexual harassment at the workplace. One such instance is Women’s voice (an NGO) in Goa

mobilized which public opinion against the Chief Minister who allegedly harassed his secretary, through rallies demonstration till the CM was forced to resign.

For the first time in the history of the Indian Courts in 1997 the Supreme Court of India recognized sexual harassment at workplace as a violation of human rights but also as a personal injury to the affected woman.

### **Pre Vishakha Scenario**

Before the Vishakha guidelines came into picture, the women had to take matter of Sexual Harassment at Workplace through lodging a complaint under Sec 354 and 509 of IPC.

Sexual Harassment was a serious issue and it still is, it was needed to be given priority and measures were decided to be taken to tackle this problem. Government, employers, employees, women organizations all were thinking how to eliminate this menace from the society.

Everybody wanted to prevent Sexual Harassment as prevention is the first step to prohibit or abolish any hazardous thing from the society. To achieve this, one needs legislation as a tool based on that the government and the organizations will be able to make strategies and policies to remove the issue.

As all know Sexual Harassment is universal problem which is kind of violence against women. International community has recognized in their international treaties and documents the free from Sexual Harassment as a human right of women. All the legal instruments dealing with this matter have laid down protection of life and liberty and these instruments have been used as a source to prevent and address the issue.

In India till the Vishakha judgment came there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Even the Constitution of India had grounded provisions in the form of fundamental rights of life and liberty, the right against discrimination and the freedom to practice any trade or profession or to carry on any occupation.

### **Post Vishakha Scenario**

India did not have any legislation till the Bill for the protection of women from Sexual Harassment was moved in the Parliament in the year 2005. After a 10 long years gap in 2010, the Bill was in the Lok Sabha with slight changes in the old Bill. The new Bill defined “sexual harassment “and also provided for a redressal mechanism through “Internal Complaints Committee” in the workplace or “Local Complaints Committee” at the district level. There was a problem regarding the action to be taken against false and malicious charges or complaints, to solve this issue the Parliamentary Standing Committee in June 2011, submitted

recommendations to remove false and malicious charges. Then the newer version of the Bill retained the action against false and malicious charges by ICC or Local Committee against the Complaint under section 14.

According to section 13 of the Bill there are two stages of enquiry, one is once the charges are found and proved the report of the same must be sent to the DC (Disciplinary Committee) and it will take action as per the service rules. Till the new Act of 2013, came into effect; the problem of sexual harassment was governed by the guidelines laid down by the Vishakha case in the year 1997.

### **Vishaka Guidelines Against Sexual Harassment at Work Place**

The Supreme Court of India in the case of Vishakha State of Rajasthan in 1997 had recognized this flaw or loophole in the IPC and gave a landmark decision whereby it gave certain guidelines which were to be followed by both public and private sector organizations to provide protection and redressal to female employees from sexual harassment in their organizations.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act came into effect on 9th of December 2013. As the name suggests its objective is to prevent, prohibit and in case of violation, to provide redressal to the victim. This Act contains almost all of the directives given by the SC in Vishakha case and it also consists of several other provisions such as the Complaint Committees have been granted the powers of Civil Courts in garnering evidences; if the employers fail to comply with the provisions of the Act, they will be liable for penalties up to Rs. 50,000.

### **Preventive Steps**

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation, they should take the following steps:

1. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
2. The rules of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
3. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the industrial employment (standing orders) act, 1946.
4. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with

her employment.

### **Criminal Proceedings**

Where such conduct amounts to a specific offence under the IPC or under any other law, the employer shall initiate appropriate action in accordance with law by making complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment.

### **Disciplinary Action**

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

### **Complaint Mechanism**

Whether or not such conduct constitutes an offence under law or a breach of the service rules, and appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

### **Internal Complaints Committee**

The complaint mechanism, should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service, including the maintenance of confidentiality. The complaint committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the complaints committee to the government department.

### **Worker's Initiative**

Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

### **Awareness**

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner.

### **Types of Workplace Harassment**

Workplace harassment can take many forms, and it doesn't always look the same. Knowing the various ways workplace harassment can manifest itself can help you identify it when it's happening to you or a colleague.

### **Verbal Harassment**

Verbal harassment can be an ongoing battle of destruction that threatens your

health and career. It consists of demeaning remarks, offensive gestures and unreasonable criticism. It can involve insults, slurs, unwanted jokes and hurtful comments. Verbal harassment can be difficult to recognize and is often a gray area, since it is a nonphysical form of violence. “Often, yelling, cursing or making inappropriate remarks or jokes about a co-worker is seen as a case of personality conflict and not as harassment, even when such behaviour can have a negative psychological impact on the victim and result in outcomes such as depression, high blood pressure and anxiety,” said Chris Chancey, founder and CEO of Amplio Recruiting.

### **Psychological Harassment**

Psychological harassment is similar to verbal harassment, but it is more covert and consists of exclusionary tactics, like withholding information or gas lighting. Chancey said that these actions are intended to mentally break down the victim, chip away at their self-esteem and undermine them. “Behaviours such as taking credit for someone’s achievement, making impossible demands, imposing unreasonable deadlines on a particular employee, constantly requiring an employee to perform demeaning tasks that are outside of their job scope or persistently opposing everything someone says may not seem like harassment, but this can be a form of deliberate psychological bullying,” he said.

### **Digital Harassment (Cyberbullying)**

“Digital harassment includes posting threats or demeaning comments on social media, creating a fake personal to bully someone online, creating a webpage about the victim to mock and belittle them, and making false allegations online,” said Sheri Mooney. Social media has become common in the workplace, and with the discussion of taboo topics becoming more acceptable, Chancey said that it is now possible for anyone to digitally harass others easily given the ubiquity of internet-connected devices in the workplace. “People tend to be braver – which, unfortunately, includes being meaner – behind a screen,” Garvin said. “The good news about online harassment: It is documentable and easily proved. This helps so much with reporting and proving it.” To monitor the situation, Garvin suggested taking screenshots, saving emails on your personal computer and keeping a file of everything that makes you uncomfortable.

### **Physical Harassment**

Physical harassment in the workplace can vary in degrees. Mooney said that these can include simple unwanted gestures, like touching an employee’s clothing, hair, face or skin, and more severe gestures, like physical assault, threats of violence and damage to personal property. Because of the variation in degrees of physical harassment, it can be hard to identify. Chancey said that some physical harassment

might be downplayed as a joke if there is no physical harm done.

“If an employee routinely shoves, blocks and kicks a co-worker, but the victim has never been hurt from the shoves and kicks, this might not be seen as harassment, especially if it is done by a supervisor or an otherwise high-performing worker.”

Even if there is no severe physical harm, it can still be considered physical harassment. If a situation becomes violent, employees should call 911 immediately and avoid intervening in the situation.

### **Why Reporting Workplace Sexual Harassment is Important?**

Mooney stressed the importance of reporting any form of workplace harassment, because there may be others who have already reported similar offenses by the same person (or group of people). And if nobody has reported it yet, then it is even more important to call HR’s attention to it. You never know how many others might have been impacted by that perpetrator, regardless of whether or not they chose to report it. Many organizations have formal policies for reporting workplace harassment. Make sure you check your employee handbook or, if you are committed to reporting, ask your HR department how to go about doing so.

### **How to Report Workplace Sexual Harassment?**

If your employer doesn’t have a formal reporting process in place, here are some of the steps that you can follow in a nonviolent situation:

If the harassment does not involve physical violence, try to resolve the situation directly with the perpetrator. If the situation seems too dangerous to do so, then keeping yourself safe is the top priority.

Consider escalating the issue to your immediate manager – unless, of course, your manager is the perpetrator. Bring the issue to the attention of HR if your attempts to resolve it with the harasser fail. If you can, provide evidence, such as screenshots, texts, emails and eyewitness accounts. If your company uses HR software, file complaints through the appropriate portal to ensure everything is documented.

### **How to Avoid When Facing Workplace Sexual Harassment?**

When dealing with workplace harassment, you should avoid a few behaviours, according to Chancey. These mistakes could serve to escalate the situation or put you in a dangerous position.

**Do not retaliate** - Retaliation can escalate the issue and will often make matters more complicated. Instead, escalate the issue properly, and let your HR professionals handle things from there.

**Do not complain to co-workers** - Your colleagues do not have much power to change anything and will likely water down your version of events if they are

called to testify. Also, it's important to remember that your co-workers all have different relationships with each other.

**Do not keep quiet** - You should always report any form of harassment, and it should be handled accordingly. All harassment incidents should be reported, and all complaints should be thoroughly investigated

### **Current Indian Law on Sexual Harassment Against Women**

To understand the whole jurisprudence on Sexual Harassment of Women at Workplace we need to step back to the landmark judgment of the honourable Supreme Court in Vishakha, in this case for the very first time in the definition of "Sexual Harassment" was laid down, it also acknowledged "Sexual Harassment at Workplace" to be a human rights violation and detailed guidelines were brought in.

In India, sexual harassment violates the women's fundamental rights under Articles 14 and 21 of the Indian Constitution. Other legislations which try to prevent sexual harassment are Indian Penal Code, the Indecent Representation of Women (Prohibition) Act, 1987, the Industrial Dispute Act, 1947 and the Factories Act, 1948. The Protection of Human Rights Act, 1993 should also be considered as the rights of women are also human rights and need to be protected at any cost.

### **Reasons of Sexual Harassment at Workplace**

Reasons for sexual harassment of women at workplace are many; some reasons are of generally prevailing in the society as a whole but some are specific to workplace. A few among them will be discussed below:

#### **Patriarchal Structure**

The basic reason behind almost all types of harassment or violence against women lies in our society's patriarchal structure whereby a male always thinks himself superior than the woman in every aspect of life. This superiority complex manifests itself in various kinds of discriminatory practices against women in general and also against working women. Thus, a male colleague would not like his female co-employee to work with him equally or he would not like her to reach at a higher position in the office; and to make her feel inferior or to make her uncomfortable or in order to harass her, different kinds of techniques are used by male colleagues and prominent among these are sexually coloured techniques such as indecent remarks, unwelcome conduct, showing of vulgar images or videos or any other similar behaviour.

#### **Sexual Perversion**

Apart from this, sexual perversion of mind among certain individuals is also

one of the major reasons of sexual harassment of women at workplace. While more and more female employees are being recruited by both public and private sectors, such men have got an easy access to indulge in sexually perverted behaviours.

### **Jealousy at Workplace**

Jealousy at workplace is also a reason for such crimes against women employees; a male employee would not like to see his female colleague to get success, promotion or incentives by the employer. And in jealousy, he would harass her through sexually perverted behaviour. It is also linked to perceived superiority feeling among men that a woman could never become better than them.

### **Feeling of Contempt and Disrespect**

Apart from these reasons, a general feeling of contempt and disrespect for women among male species is also a prominent reason whereby women are considered only as an object to fulfil sexual desires of men. Women at workplace is no different; male colleagues consider them as their object of play, vulgar comments and jokes, obscene gestures, gossips of sexual nature etc. are the norms of any workplace. Though, in our society we claim to respect and worship women but in reality, various types of crimes committed against women shows that our claim in nothing but a falsity.

### **Male Superiority**

Thus, there can be several and varied reasons for sexual harassment of women at workplace but the essential elements of all such reasons is the deep-rooted feeling of Male Superiority among men in general. The social conditioning of men in a patriarchal system reinforces such feeling generation after generation which creates the base for crimes like sexual harassment at workplace.

### **Legal Provisions to Deal with Sexual Harassment at Workplace**

Sexual harassment at workplace as a specific crime was not there in statute books till 2013. Even the Indian Penal Code, 1860 do not have any section dealing with workplace sexual harassment as a separate crime. Only sexual harassment in general has been defined and made punishable under Section 354 of the IPC. Thus, sexual harassment at workplace was also being dealt with under the same section till now.

### **Indian Constitution on Sexual Harassment**

Sexual harassment clearly violates the fundamental rights of a women to equality under Article 14[2] and Article 15[3], her right to life under Article 21[4], and her right to practice any profession and carry on any occupation, trade or business [5], which includes a Right to safe environment free from sexual harassment.

### **Indian Penal Code on Sexual Harassment**

In 2013, substantial changes were made in the way sexual harassment was

viewed within the criminal justice system in India. The Criminal Law Amendment Act of 2013, which commenced on April 3, 2013, included Section 354A of the Indian Penal Code, 1860 that defined sexual harassment. The Indian Penal Code, 1860 has also defined the term sexual harassment and related offences and put forth punishments for the same. Section 354A- Sexual harassment is unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favours, showing someone sexual images (pornography) without their consent, and making unwelcome sexual remarks

- Punishment: Up to three years in prison, and a fine.
- Section 354B- Forcing a woman to undress.
- Punishment: From three to seven years in prison, and a fine.

Section 354C- Watching or Capturing images of a woman without her consent (voyeurism). Punishment: First conviction – one to three years in prison and a fine. More than conviction– three to seven years in prison and a fine.

Section 354D- Following a woman and contacting her or trying to contact her despite her saying she does not want contact. Monitoring a woman using the internet or any other form of electronic communication (stalking). Punishment: First conviction – up to three years in prison and a fine. More than one conviction–up to five years in prison and a fine.

How Companies can avoid Workplace Sexual Harassment, especially against Women? According to Mittal, "A company of the people, for the people, by the people is that appreciates investing time and resources in building happy and safe workplaces for women and for everyone else". She believes that the company's promoters should be the supreme leader in making a workplace people oriented before profits, "it should not be HR's job in the first place," she added.

### **Sexual Harassment in Indian Companies**

Mittal said that cases of sexual harassment are higher in those organisations which focus on profits before people. And, in order to eradicate such malpractices in an organisation, Pareek said that two ingredients are required--first, the top executives of a firm, who can admit that it is a reality without feeling any shame about it. Secondly, individuals need to speak up, irrespective of the absence/presence of the former. "If we have both ingredients, we will address this problem statement quickly and fast, but we aren't that lucky!"

### **Indian Law Against Sexual Harassment**

The POSH Act protects against sexual harassment in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed in 2013. It broadened the Vishaka guidelines, which were already in place since 1997. The 2021 National Crime Record Bureau (NCRB) data

reported 17,539 cases of sexual harassment in the country of which 418 were from workplace or office premises. The NCRB report revealed that Assam, Haryana, Maharashtra, Tamil Nadu, and West Bengal had the most cases of workplace sexual harassment against women in India.

## **II.CONCLUSION**

Sexual harassment is a serious problem in the workplace and it has become one that receives a lot of negative attention. However, India is a late entrant in formalizing sexual harassment at workplace as a penal offence punishable with imprisonment and penalty. The harsh reality of sexual harassment cases at workplace is that there is more to worry about under-reporting than people misusing the law. With the advent of the present legislation, a paradigm shift can be noticed in the way employers are made liable for the breach of law by its employees. Until the enactment of this law, vicarious liability on sexual harassment at the workplace was non-existent. However, while the Government of India has been taking steps to monitor implementation of the 2013 Act in government offices, there is an absence of mechanism to check execution in the private sector.

One can prevent this issue at different levels, government, organizational and individual level by trying to prevent this issue by confronting and not blaming anyone. At the Organizational level the employer can provide safe and harassment free environment through provisions and regulations framed within the organization. The sense of security which can be derived from this organization policy can facilitate to work effectively and efficiently for a productive outcome. The entity can give training programme, workshops, educational programme related to sexual harassment to avoid situations.

### **Suggestions**

The organization must show commitment to this matter. Every matter must be taken seriously and investigated without any delay. This will send a message to all employees that the employer is interested in protecting the interests of women employees and also trying to bring a good working environment. Surveillance methods is a preventive measure, where CCTV are installed in the workplace.

Employers must conduct monthly meeting with employees to know their problems. Accordingly, they can provide a safe working environment. From the angle of Government, a tremendous job has been enacting a law to eliminate this social problem of Sexual Harassment. The significant consideration part is the implementation process. There is a need to bring empowerment of women through educational programmes and knowledge which will help them to recognize and realize their basic rights. Government see that there is gender equality.

The media can play an important role in curbing this curse from the society through films, news, advertisements, dramas these are approachable to the public

and through other sources like debates, talk shows, and the media can change the mind-set of the people.

If the women group or workers come to know about any such harassment, they must bring it to the notice of the complaint committee. It is the duty of the committee to keep everything confidential. Every female worker should know that it is employer's legal duty to provide women employee with a safe working environment. All the male employees must understand these kinds of incidents affect the health, confidence and ability of a woman and will also lead her to leaving the job.

Above all these there should be social acceptability. Women should not fear to come forward with their problems and complaints. They must be feeling courageous to speak out for themselves. There must be greater involvement of public in awareness programmes and they must play a greater participatory role in governance.

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