

Sexual Harassment of Women at Workplace in India: A Critical Study

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Abstract:

One of the main issues our women currently face in all spheres of life is sexual harassment. We seldom ever crosses all are making every effort to address the rising issue. One of those issues that negatively impacts women participation in economic and social growth is sexual harassment. Women though centuries have been perceived to be, and therefore are socially conditioned from an early age to be subordinate to men. Sexual harassment may take diverse and varied forms. Though sexual harassment has been a fact of life since humans first inhabited the earth, it has been recently acknowledged to be a serious and a real problem particularly at the place of work. The harassment is by co-workers and supervisors. Whereas sexual harassment results in the violation of the fundamental rights of a women to equality under articles 14 and 15 of the constitution of India and her right to life and to live with dignity under article 21 of the constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. We have well developed Legislature, Executive and Judiciary then also why the women are facing this much of sexual harassment at work place, why Acts, Laws are not made their life secure and safe. The methodology adopted for research is both doctrinal and non-doctrinal method, Legislations, Acts, etc. The filed study will be conducted the help of women at different working places in India. The study focus on current measure of harassment and begun to fill in the gap in the literature. The purpose of the study is to begin filling the void in the existing literature and developing a measure designed specifically to assess sexual harassment of women. Is cruelties against women is a universal problem.

Keywords: Violence, harassment, Discrimination, Violation of Fundamental Rights and Legislation Policy.

1. Introduction:

“You can tell the condition of a nation by looking at the status of its women.”

– Pandit Jawaharlal Nehru

Sexual harassment of women is a global phenomenon prevalent 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. It being offensive to human dignity, human rights and gender equality, has emerged as a fundamental crisis the world over. It is a complex issue involving women, their perceptions and behaviour and the social norms of the society which emerges from gender

discriminatory attitudes and is a complex interplay of gender, power and sexuality. In India a woman is sexually harassed every 12 minutes.¹ Due to industrialization, globalization, development in various fields, role of women is changing rapidly in India. Today women in India are showing progress in almost all the fields such as education, economics, politics, media, art, space and culture, service sectors, science and technology etc. the role of women has shifted from. The term sexual harassment in a legal sense seems to have been first coined in the U.S.A. and subsequently exported from there to other industrialized countries including Australia, Canada, New Zealand, Japan and a number of countries in Western Europe.² The term “sexual harassment” was used for the first time by the Supreme Court of India in 1997. The Supreme Court laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work until legislation is enacted. It was observed that, the fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working condition. The Honorable Supreme Court in the absence of domestic law occupying the field of sexual harassment, directed to formulate effective measures to check the evil of sexual harassment of working women at all work places. The contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Arts. 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Therefore, while the case had been adjudicated under the terms of Article 32 for enforcement of the fundamental rights, the Honorable Supreme Court was particular to declare that this should be treated as law declared by it under Article 141 of the Constitution. It was observed that: the fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working condition.³ In *Apparel Export Promotion Council v. A.K. Chopra*⁴, the Supreme Court for the first time applied the law laid down in *Vishaka’s* case. Despite the guidelines laid down by the apex court in *Vishaka’s* case the evil of sexual harassment is still rampant in Indian society.⁵

But in the recent years more women have been coming forward to report such practices, some taking their cases to court. There are some women workers who try to get undue benefits by using sex as step for getting benefit from their superiors. In her report is special report stressed that that sexual harassment constitutes a form of sex discrimination. It not only degrades the women, the report noted, but reinforces and reflects the idea of non professionalism on the part of women workers, who are consequently regarded as less able to perform their duties than their male colleagues. *Vishakha* case is an example in which Supreme Court issued guidelines for saving honour of women at workplace.⁶

Bhanwari Devi was a social worker in a programme initiated by the state government of Rajasthan aiming to curb the evil of Child Marriage. Amidst, the protest to stop a child marriage in one Ramakant Gujjar’s family Bhanwari Devi tried her best to stop that marriage. However, the marriage was successful in its completion even though widespread protest. In 1992, to seek vengeance upon her, Ramakant Gujjar along with his 5 men gang raped her in front of her husband. The police department at first tried to dissuade them on filing the case on one pretext or other but to her determination; she lodged a complaint against the accused. They were however, subjected to harsh cruelty by the female police attendants even to the extent that for procuring evidence her lehenga was demanded from her and she

¹D.K Srivastava (2010) “Progress of Sexual Harassment Law in India, China and Hong Kong: Prognosis for Further Reform”, 51 HILJ 172.

² ILO, Conditions On Work Digest, Vol. 11, 1/1992, “Combating Sexual Harassment at Work”, p. 53

³*Vishaka v. State of Rajasthan*, AIR 1997 SC

⁴*Ibid.*

⁵AIR 1999 SC.

⁶ Dr.G.P.tripathi, “Law and Social Transformation”, Central law Publications 2022, p.307.

was left with nothing but her husband's blood – stained dhoti. Adding to their misery, their request to spend the night in the police station was also refused.

The trial court acquitted the accused but she didn't lose hope and seeing her determination all female social workers gave their support. They all filed a writ petition in Supreme Court of India under the name 'Vishakha'. The apex court was called upon to frame guidelines for preventing Sexual Harassment at Workplace. The hon'ble court did come up with such guidelines as Vishakha Guidelines which formed the basis of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

It has been laid down in the judgment above-mentioned that it is the duty of the employer or other responsible persons in work places or other institutions to,

1. Prevent the happening of such event
2. To furnish the employees with effective mechanism for the process of resolving & trying of such indecent acts of sexual harassment
3. For this purpose "Sexual harassment" means disagreeable sexually determined behavior direct or indirect as:
 4. Physical contact and advances;
 5. A demand or request for sexual favours;
 6. Sexually coloured remarks;
 7. Showing pornography;
 8. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
 9. Gender Equality finds place in Fundamental Rights enshrined under Article 14, 19 & 21.

Judgment: The violation of gender Equality which in turn violates these integral rights of the female class. Such harassment also results in the freedom provided under Article 19(1)(g). The protection of females has become a basic minimum in nation across the globe. In the absence of domestic law to curb the evil, assistance could be rendered from International Conventions and Statutes to the extent that it does not contravenes with any domestic law or the do not violates the spirit of Constitution. The Judiciary derived this authority from Article 51(c) and 253 r/w Entry 14 of the Union List of Seventh schedule of the Constitution. The court held that such violation therefore attracts the remedy u/a 32. The Indian Judiciary has time and again reiterated upon the fact that Right to life under Art. 21 also comprise Right to live with dignity. Such aforesaid dignity could and should be protected with suitable guidelines. It is of utmost importance to frame some guidelines to fill the legislative vacuum and curb the evil. The apex court found authority in filling the legislative gap by making law so as to maintain the Independence of Judiciary and its role envisaged under Beijing Statement of Principles and Independence of Judiciary in LAWASIA region which was signed by the Chief Justice of the Asia Pacific in 1995 as those representing the minimum standards necessary to be observed in maintain an independent and effective Judiciary.

The judiciary found the following as source of the guidelines which would act as law of the land:

1. Convention on the Elimination of all forms of Discrimination against Women (Article 11 & 24)
2. General recommendations of CEDAW in this context (Article 11, 22, 23, 24)
3. At the 4th World Conference on Women in Beijing, Govt. of India made an official commitment to set up a National Commission at every level and in every sector that will look after Women's Rights.

The Supreme Court inter alia, clearly mentioned that the guidelines were to be treated as law declared u/a 141.

Vishakha Guidelines:

1. Employer or other answerable persons are bound to preclude such incidents from happening. In the event of happening of such incidents the organization must consist of mechanism to provide conciliatory and prosecutionary facilities.
2. Definition – For this purpose “Sexual harassment” means disagreeable sexually determined behavior direct or indirect as:
 - a) Physical contact and advances;
 - b) A demand or request for sexual favours;
 - c) Sexually coloured remarks;
 - d) Showing pornography;
 - e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
3. Every employer other than providing services under (1) is under an obligation to
 - i. Expressly notify the prohibition of sexual harassment
 - ii. The rules/regulations of public sector bodies must include rules/regulations prohibiting sexual harassment.
 - iii. The Standing Orders of the private employer made under Industrial Employment (Standing Orders) Act, 1946 should include such provisions to prohibit sexual harassment.
 - iv. The working conditions must be appropriate and not hostile to the woman employees of the organization. Further, the female employees should feel a sense of equality in the atmosphere.
4. When the offences committed are the one discussed under Indian Penal Code or any other law, the employer is bound to start the prosecution with complaining to appropriate authority. Further, the employee must provide the victim all sort of protection while dealing with the complaints.
5. Appropriate Disciplinary Action shall be taken in case there is a violation of service rules.
6. Irrespective of the fact that the particular act constitutes an offence under IPC or any other law, the organization must have a redressal mechanism to deal with it.
7. The Complaint Committee must be headed by a woman and not less than half of the members must be woman. For further assistance the committee shall also include NGO’s or someone aware with such issues.

The committee must be adequate in providing relief to the victim with appropriate counseling facilities. An annual report shall be submitted to the govt. by the committee informing the former of the development regarding the said issue in the organization.
8. An employee-employer meet shall be arranged where the workers shall be allowed to raise issues of sexual harassment.
9. The employer shall take adequate steps in order to spread awareness about the social evil.⁷

2. Definition Sexual Harassment

As a result of household work to commercial world, offences against women are also increased day by day. In spite of rising incidences of sexual harassment, their reporting is almost nil as women fear loss of

⁷<file:///C:/Users/hp/Desktop/Vishakha%20Vs.%20State%20of%20Rajasthan%20-%20Case%20Summary%20-%20Law%20Times%20Journal.html>. Access on 0/18/23, time:05:00

personal & professional reputation and lively hood owing to the social stigma growing importance of this issue S. 354A was added to the IPC through the way of Criminal Law (Amendment) Act, 2013 which enlists the acts which constitutes the offence of sexual harassment. They are:

- ▶ physical contact and advances;
- ▶ A demand or request for sexual favours; or
- ▶ sexually coloured remarks
- ▶ showing pornography against the will of a woman; or
- ▶ Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.⁸

Making sexually coloured remarks earlier, there were no related laws in the Indian Penal Code that could be evoked. There were three sections in Indian Penal Code viz. S. 94, 354 and 509 to deal with such crimes.⁹ However these related laws are framed as an offence that either amount to obscenity in public or acts that are seen to violate the modesty of women. While Section 294 IPC is a law applicable to both men and women, the latter two are specifically oriented towards women.

3. Types of Sexual harassment of women at Workplace: The US Supreme Court has expressed that though the distinction is of limited utility yet is not irrelevant altogether. This sexual harassment of women at workplace may be predicated on either of the following two types there are,

1. Quid Pro Quid: It means “This for that”. It refers to situations where an employer or superior at work makes tangible job related consequences such as promises of promotion, higher pay, academic advancement etc. conditional upon obtaining sexual favours from an employee.¹⁰ This types of sexual harassment holds the women to ransom as her refusal to comply with a request can be met with retaliatory action such as dismissal, demotion, memos and tarnished work record and difficult work conditions such an action must prove that,

1. The employee was subjected to unwelcome sexual advances or request for sexual favours, and
2. The reaction to the harassment rejection or submission as the case may be affected tangible aspects of the employee’s compensation, terms, conditions and promotion, excess to training opportunities or any other privileges of employment.

In countries like India there is regular large scale quid pro quid harassment in the construction and garment industry. Jobs being scarce, the pressure of survival in a situation of scarcity added to their low status in society, keeps these women silently this kind of harassment here becomes entrenched and structured.

Adverse work consequences may be two types there are,

(i). Tangible: This type of consequences are quite visible such as hiring, firing, failing to promote, reassignment with significantly different responsibilities a decision to cause a significant change in benefit, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits and significantly diminished material responsibilities.

(ii). Intangible: This type of adverse employment action a complainant need not demonstrate any so called tangible adverse employment action over and above a hostile or demeaning environment.

⁸ Indira Jaising, “ Sexual Harassment at Workplace”, Universal law publishing 2015, P.15.

⁹S. 294 IPC. Obscene acts and songs.

¹⁰ International womens Rights Action Watch Asia Pacific (IWRAW) Occasional Papers Series No.7, Sexual Harassment in the Workplace, Opportunities and Challenges for Legal Redress in Asia and Pacific, P.8.

2. Hostile Work Environment: The U.S court held that when the workplace is permeated with discriminatory intimidation, ridicule and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.¹¹

4. Prevention of Sexual Harassment: Section 3 of the Act provides for certain circumstances which may amount to sexual harassment if they occur or is present in relation to any act or behavior of sexual harassment. Prevention of sexual harassment involves creating a safe and respectful environment where everyone is treated equally and harassment is not tolerated. Here are some key steps that can be taken,

1. Establish clear policies: Organizations should develop and communicate clear policies that define sexual harassment, provide examples of prohibited behaviors, and outline the consequences for violations. These policies should be readily accessible to all employees.

2. Education and training: Conduct regular training sessions to educate employees about what constitutes sexual harassment, its impact, and how to prevent it. This training should also emphasize reporting procedures and support available to victims.

3. Promote a respectful culture: Foster a culture of respect, dignity, and inclusivity within the organization. Encourage open communication and respectful interactions among employees at all levels.

4. Encourage reporting: Create a safe and confidential reporting mechanism that encourages victims and witnesses to report incidents of sexual harassment. Ensure that those who report harassment are protected from retaliation.

5. Promptly investigate and address complaints: Establish a fair and impartial process for investigating complaints of sexual harassment. Take all complaints seriously, conduct investigations promptly, and take appropriate action based on the findings.

6. Support victims: Provide support and resources for victims of sexual harassment, including counseling services and legal assistance. Ensure that victims are aware of their rights and the available avenues for seeking redress.

7. Lead by example: Leaders and managers should lead by example and demonstrate zero tolerance for sexual harassment. They should actively promote a respectful workplace culture and promptly address any issues that arise.

8. Regular evaluation and improvement: Continuously assess the effectiveness of prevention measures and make necessary adjustments. Seek feedback from employees and monitor the workplace for signs of harassment or potential vulnerabilities.

Remember prevention of sexual harassment requires a comprehensive and ongoing effort that involves everyone in the organization.

5. Complaint Committee: Section 4 of the Act provides that every employer of the workplace shall, by an order in writing, constitute a committee to be known as the internal complaints committee. The presiding officer of the internal complaints committee shall be a woman employed at a senior level at workplace from amongst the employees. Section 6 states that every district officer shall constitute in the district, a committee known as the local complaints committee to receive the complaints of sexual harassment. A Complaint Committee of women at the workplace, commonly known as a Women's Complaint Committee or Internal Complaints Committee (ICC), is a key component in addressing and

¹¹ Ritu Gupta, "Sexual Harassment at Workplace" Lexis Nexis, 2014 p.19-22.

resolving complaints related to sexual harassment in the workplace. Here's an overview of its purpose and responsibilities:

1. **Composition:** The committee is typically composed of members, both women and men, who are trained in handling complaints of sexual harassment. It should have a majority of women members and include representatives from various departments or levels within the organization.
2. **Complaint handling:** The committee is responsible for receiving and addressing complaints of sexual harassment in a fair, impartial, and confidential manner. It should have procedures in place to ensure that complainants feel safe and comfortable throughout the process.
3. **Investigation:** The committee conducts investigations into the complaints it receives. This involves gathering evidence, interviewing relevant parties, and documenting findings. The process should be objective and thorough, ensuring that both the complainant and the accused are given an opportunity to present their side of the story.
4. **Resolution:** After completing the investigation, the committee determines whether the complaint is substantiated and takes appropriate action based on its findings. The actions can range from counseling and warnings to disciplinary measures, depending on the severity of the harassment and organizational policies.
5. **Reporting and recommendations:** The committee prepares reports summarizing the complaints received, investigations conducted, and actions taken. These reports may include recommendations for policy changes, awareness programs, or other measures to prevent future incidents of sexual harassment.
6. **Awareness and training:** The committee plays a crucial role in promoting awareness about sexual harassment and preventive measures within the organization. It conducts training sessions to educate employees about their rights, the complaint procedure, and the importance of maintaining a respectful work environment.
7. **Compliance with laws and policies:** The committee ensures that the organization complies with applicable laws such as local laws on sexual harassment prevention. It also ensures that the organization's policies and procedures regarding sexual harassment are up to date, communicated effectively and implemented consistently.

The Complaint Committee of women at the workplace plays a vital role in safeguarding the rights and well being of employees, particularly women, and in creating a harassment-free work environment. It should have the necessary authority, independence and resources to fulfill its responsibilities effectively.

6. Complaint of Sexual Harassment: Section 9 of the act provides that any aggrieved woman may make a complaint of sexual harassment at workplace, in writing to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident. When it comes to complaints of sexual harassment of women at the workplace, the specific sections or provisions may vary depending on the jurisdiction and the applicable laws or policies. However I can provide a general overview of the elements typically covered in such complaints:

1. **Introduction:** Begin by stating that you are filing a complaint of sexual harassment at the workplace.
2. **Details of the Incident(s):** Provide a clear and concise description of the incidents of sexual harassment that you have experienced or witnessed. Include relevant information such as dates, times, locations, and individuals involved.

3. **Nature of Sexual Harassment:** Explain how the actions or behaviors in question meet the criteria of sexual harassment. Reference the legal definition of sexual harassment or any relevant policy provisions that outline what constitutes sexual harassment in your jurisdiction or organization.
4. **Adverse Impact:** Describe the negative effects that the sexual harassment incidents have had on your well-being, job performance, or work environment. This may include emotional distress, interference with work duties, or an overall hostile or intimidating atmosphere.
5. **Reporting and Inaction:** If applicable, mention any previous reports or complaints you may have made and whether appropriate action was taken. If there was no action or if the situation persisted, explain the impact it had on your decision to file a formal complaint.
6. **Witnesses or Supporting Evidence:** If there are any witnesses who can corroborate your account or any supporting evidence (e.g., emails, text messages, photographs), mention their availability and willingness to provide statements or documentation.
7. **Request for Investigation:** State that you are formally requesting an investigation into the complaint of sexual harassment. Emphasize the importance of a fair and impartial investigation that respects the confidentiality and privacy of all parties involved.
8. **Desired Outcome:** Specify the outcome you seek, such as disciplinary action against the harasser, implementation of preventive measures, or any other appropriate resolution to address the situation.
9. **Contact Information:** Provide your contact details (email address, phone number) for further communication regarding the complaint. Hence there has been to adapt the content of the complaint to the specific laws, policies, and procedures applicable in your jurisdiction or workplace. It is advisable to consult with a legal professional or refer to your organization's specific guidelines to ensure accuracy and compliance.

7. Conciliation: Section 10 provides a special provision for settlement of the matters of sexual harassment at workplace through conciliation. Section 10 states that the Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent Through conciliation. But no monetary settlement shall be made as the basis of conciliation.

8. Punishment for False or Malicious Complaint and False Evidence: Disciplinary Action for False or Malicious Complaint and False Evidence when the Internal Committee or the Local Committee, as the case may be, determines that the allegation against the respondent is malicious, that the aggrieved woman or any other person making the complaint made the complaint knowing it to be false, or that the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the complainant. Certain responsibilities that every employer is obligated to carry out have been stated under chapter VI in section 19 of the legislation. Every employer is required by law to provide a safe working environment, display the legal repercussions of sexual harassment at any prominent location in the workplace, and establish an internal committee. This committee is tasked with regularly organizing workshops and awareness programs to familiarize employees with the Act's provisions as well as orientation programs for its members. It is also mandated that all necessary facilities be made available and witnesses before the Internal Committee or the Local Committee to make available such information to the Internal Committee or the Local Committee, as it may require having regard to the

complaint of sexual harassment. The employer is further required to provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code, cause to initiate action under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct and to monitor the timely submission of reports by the Internal Committee.

9. Disciplinary Action : When the internal complaints committee or the local complaints committee determines that the allegations of sexual harassment against an employee made by the aggrieved women have been proven, they must recommend to the employer or the district officer that sexual harassment be treated as a misconduct in accordance with the provisions of the service rules that apply to the respondent, or, if no such service rules have been made, in a way that Penalties have been prescribed for employers. Noncompliance with the provisions of the act shall be punishable with a fine up to 50000. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business.¹²

10. Suggestion

1. Implement clear and comprehensive sexual harassment policies: Companies should establish and enforce strict policies that clearly define what constitutes sexual harassment, outline the reporting process, and emphasize a zero-tolerance approach.
2. Provide regular training and awareness programs: Conduct mandatory training sessions for all employees to educate them about sexual harassment, its impact, and ways to prevent and address it. Promote a culture of respect and consent through ongoing awareness campaigns.
3. Establish a confidential reporting system: Create a confidential reporting mechanism, such as an anonymous hotline or dedicated email address, to encourage victims to report incidents without fear of retaliation. Ensure that investigations are conducted promptly and impartially.
4. Encourage bystander intervention: Encourage employees to intervene when they witness or suspect sexual harassment. Promote a supportive environment where bystanders are empowered to take action and support victims.
5. Foster a culture of respect and equality: Develop a workplace culture that values diversity, inclusivity, and gender equality. Lead by example, with managers and leaders actively promoting respectful behavior and holding accountable those who engage in harassment.

Conclusion: Addressing sexual harassment of women at the workplace requires a multifaceted approach. Companies must prioritize the implementation of clear policies, ongoing training, and confidential reporting mechanisms. By fostering a culture of respect and equality, organizations can create an environment where women feel safe, supported, and empowered. It is essential for all employees, including bystanders, to actively participate in preventing and addressing sexual harassment. Together, we can work towards eliminating this pervasive issue and creating work places that are free from harassment and discrimination.

¹² Section 26, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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