

**SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA: A LEGAL
STUDY OF LAWMAKING AND JUDICIAL PROCEDURE**

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ABSTRACT:

Sexual harassment is one of the main causes for concern in the modern society. Sexual harassment of women has emerged as the most common criminal offence. The majority of crimes involve workingwomen. Sexual harassment of women in the workplace is a horrific crime that is committed by women themselves. It is a crime that compromises women's security in a variety of settings, including the workplace. The Indian Constitution's Articles 14 and 15, which provides women's equality, as well as Article 21's guarantee of life and a decent existence, are all violated by sexual harassment. The genesis of sexual harassment has been derived from the Bhanwari Devi case and an analysis of the 1997 verdict in Vishaka and Ors. v. Union of India, which illustrates the factors that frequently contribute to a rise in sexual harassment cases over time. A woman's emotional and mental development, is also negatively impacted by sexual harassment, in addition to her outward looks. The Justice Verma Committee made a recommendation that became the Sexual Harassment at Workplace Act, 2013. The Act seeks to safeguard of women in the workplace, which encompasses any institution, hospital, private sector Organization, or location that an employee visits while on the job. The definition of sexual harassment is given at the outset of the article, along with a thorough background and an attempt to emphasize the numerous circumstances that, from various historical viewpoints, tend to spontaneously increase the number of sexual harassment instances.

Keywords: Sexual Harassment, Women, Work Place, POSH Act, Constitutional Safeguards Judicial, Exposition.

INTRODUCTION:

“Country and Nation which do not respect women have never become great nor will ever be in Future”

Swami Vivekananda

Globalization has resulted in a significant shift in the position of women around the globe. But as more women join India's mainstream economy, workplace sexual harassment has grown in scope. Sexual harassment is a widespread legal violation that is a disrespectful, uncontrolled, unethical, immoral and a legal wrong which prevail universally. The International labour Organization claims that workplace sexual harassment prevents it from reaching its objective of providing good working conditions for all employees. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and

emotional suffering.¹ A woman being sexually harassed is an uncommon occurrence that occurs widely in both industrialized and developing nations. Crossing barriers of religion, culture, ethnicity, caste, class, and geography, it has spread throughout society like a virus. Human dignity has been insulted, and gender equality and human rights have emerged as fundamental issues throughout history. In India today, there is a noticeable advancement for women in nearly every sphere, including politics, business, education, and culture. Most probably, it has been seen to be happening with the female gender. The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. The sexual harassment of women at the workplace violates the basic fundamental rights of women especially the “Right to equality” under article 14, 15 and her right to life and to live with dignity under Article 21 of the Constitution of India. It is a criminal offense according to section 354A of the Indian penal code, 1860 it deals with the meaning of sexual harassment and punishments for sexual harassment.² However, workplace sexual harassment in India was for the very first time recognized by the Supreme Court of India in its landmark judgment in *Vishaka v. State of Rajasthan*³, where in the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. After the incident of Nirbhaya Murder Case, the Justice J S Verma Committee was then formed to recommend changes to the Criminal Law to allow for faster trials and harsher punishment for criminals accused of sexual assault against women. In response to Justice J.S. Verma's request, the Committee Parliament passed the Criminal Amendment Act, 2013, which amends the Indian Penal Code, the Indian Evidence Act, and the Code of Criminal Procedure and also passed the Sexual Harassment of Women at Work (Prevention, Prohibition, and Redressal) Act of 2013 (The POSH Act).⁴

MEANING OF SEXUAL HARASSMENT:

Firstly, the Supreme Court in *Vishakha* case attempts to define the concept of ‘Sexual Harassment’ as, “it includes such unwelcome sexually determined behavior (whether directly or by implication) 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.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work

¹ Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

² Ishwar Singh Rathore and Medhansh Mishra, Study on Sexual Harassment of Women at Workplace in India, Study on Sexual Harassment of Women at Workplace in India, ISSN 2581-9453, Volume II – Issue III, 2020, <https://ijlsi.com/20-study-on-sexual-harassment-of-women-at-workplace-in-india/>, visited on 16/06/2024

³ AIR 1997 SC 3011.

⁴ DrPallavi Singh* & Mr. RadhaRanjan, Sexual Harassment of Women at Work Place: A Study of Indian Legislation and Judicial Approach., Indian Journal of Law and Legal Research, Indian Journal of Law and Legal Research, ISSN: 2582-8878 (O), Vol., Iv, Issue I, Available From https://www.researchgate.net/publication/371607570_Sexual_Harassment_Of_Women_At_Work_Place_A_Study_Of_Indian_Legislation_And_Judicial_Approach, [Accessed Jun 16 2024].

(whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.” The POSH Act defines ‘sexual harassment’ in line with the Supreme Court’s definition of ‘sexual harassment’ in the Vishaka Judgment. As per the POSH Act, as- ‘Sexual Harassment’ includes unwelcome sexually tinted behaviour, whether directly or by implication, such as

- (i) Physical contact and advances,
- (ii) Demand or request for sexual favours,
- (iii) Making sexually coloured remarks,
- (iv) Showing pornography, or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.⁵

The convention on the elimination of all forms of discrimination against women (CEDAW) defines sexual harassment as- “An act which incorporates such displeasing sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. Such conduct can be dishonor and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disservice her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment”.⁶ As a result of growing importance of this issue Section 354 A After abetments 2023 (BNSS SEC 75) was added to the IPC through the way of Criminal Law (Amendment) Act, 2013 which sign up for the acts which constitutes the offence of sexual harassment. They are:

- (a) Physical contact and advances involving unwelcome and express sexual overtures; or a demand or request for sexual favors; or
- (b) Showing pornography against the will of a woman; or
- (c) Making sexually colored remarks

After discussing the above various definitions, ‘sexual harassment’ means, “Whether an act or conduct would amount to ‘sexual harassment’ is dependent on the specifics of the act and the circumstances.” The following is an indicative list of conduct that could be considered as sexual harassment:

- 1. Unwanted sexual advances or propositions;
- 2. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
- 3. Offering employment benefits in exchange for sexual favours;
- 4. Making sexual gestures;
- 5. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
- 6. Making or using derogatory comments, comments about a person’s body or dress, or sexually suggestive jokes;
- 7. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
- 8. Being forcibly kissed or hugged;

⁵ Section 2(n) of the Prevention of Workplace Sexual Harassment Act.

⁶ B.D Singh ,Issue of Sexual harassment ;A legal Prospective ,July ,2010, ShriRam Center For IndustrialAnd Human

9. Having someone expose their private parts or repeatedly staring at a woman's body parts that makes her uncomfortable;
10. Eve-teasing;
11. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
12. Gender based insults and/or sexist remarks;
13. Displaying pornographic or other sexually offensive or derogatory material;
14. Physical confinement against one's will and any other act likely to violate one's privacy.

Resources Relations.

INDIAN LEGISLATION APPROACH:

A. The Constitution of India 1950- The preamble of the Constitution provides "equality of status and opportunity," yet workplace sexual harassment is the exact opposite of what is guaranteed in terms of equality. Workplace sexual harassment is against Articles 14 and 15, which forbid gender discrimination and provide gender equality and equal protection under the law. The state is prohibited from discriminating against people based on their race, caste, religion, gender, or place of birth, according to Article 15(1). "There is nothing in this article that prevents the state from making special arrangements for women and children," however, according to Article 15(3). By doing this, the influence is neutralized and the woman is granted a particular position or status. The right of every person "to practice any profession or to carry on any occupation, trade or business" is confirmed and guaranteed by the Indian Constitution under Article 19(1) (g). Every woman has a fundamental right to work in public employment, but sexual harassment violates this right and forces her to avoid public employment.⁷ As mentioned briefly in Article 21, which states that no one should be deprived of their life or personal liberty, sexual harassment of women at work is thus a violation of these rights. One fundamental aspect of the right to life is the right to subsistence. The infringement of one's right to enterprise is sexual harassment. Under Article 21 of the Indian Constitution, every woman is entitled to the revocation of interference and discrimination on the basis of gender for the meaningful enjoyment of life. The concept of gender equality give human from in our Constitution would be an a workout in inefficiency if a woman's right to privacy is not regarded as her right to protection of life and liberty guaranteed by Article 21 of the Constitution of India.⁸ Part IV of the Indian Constitution states that the state should keep the following principles in mind when developing policies:

- a. Article 39A- Equal Justice and Free Legal Aid
- b. Article 41- Labor rights, education and, in some cases, government support
- c. Article 42- Provisions on fair and appropriate working conditions and maternity allowances
- d. Article 43- Workers' living wages and decent standard of living

Even though they are not legally binding, these guiding principles of state policy must be followed while creating, implementing, and interpreting laws. In order to preserve unity, every citizen is required under Article 51A to respect and uphold the Constitution. If considered literally, discrimination against women must be outlawed.

⁷ <http://www.un.org/documents/ga/res/48/a48r104.htm>.

⁸ SurinderMediratta, Handbook of Law, Women and Employment (1st ed, 2009).

B. Indian Penal Code of 1860 & Criminal Law (Amendment) Act, 2013- The IPC punishes "Assault of criminal force to woman with intent to outrage her modesty" under section 354⁹ It is punishable by a fine and a sentence of imprisonment that ranges from one year to five years. Despite the fact that the word "modesty," as used in Section 509(BNS Sec 79), which punishes any speech, act, or gesture meant to offend the modesty of women, imposes fines and simple imprisonment for a maximum of three years. The Criminal Law (Amendment) Act, 2013, introduced new sections such as 354A, 354B, 354C, and 354D After amendment (BNS SEC 75, 76,77,78) that specifically deal with sexual harassment, disrobe, voyeurism, and stalking in relation to SHW, whereas an act of physical and sexual assault is dealt with in S.375, S.376, 376A, S.376D, 326A & 362B(BNS Sec 63,64,65,66,124(1),124(2)) with a punishment of one year along with fine extending to death sentence.

C. The Equal Remuneration Act, 1976-ensures the elimination of discrimination against women in determining their wages, promotion and transfer and also ensures equal pay for equal work irrespective of gender and solely proportion of work done by employee.

D. The Industrial Disputes Act of 1947- The Act has a provision to allow an employee to sue the employer in labour tribunal for wrongful dismissal of employee due to non-compliance with th demands of employer to do sexual favors. The Act also includes a definition of "unfair labour practices," broad interpretation of which includes sexual harassment.

E. The Industrial Employment (Standing Orders) Act, 1946- The Act imposes a legal obligation on employers to mention and communicate working conditions of employees. The Act is a substantive law classifies sexual harassment as misconduct, which may result in suspension or dismissal of employer.

F. The Indecent Representation of Women (Prohibition) Act, 1986- Harassment of a woman by an individual through books, photographs, paintings, films, pamphlets, or packages, among other things, is punishable by a minimum sentence of two years. Companies fall under the purview of this law under Section 7 of the Act, and as a result, a two-year sentence can be imposed on the accused. The act addresses civil suits brought under tort laws on the basis of SHW that result in loss of income, livelihood, and employment.

G. The Factories Act, 1948- The Act has the provisions of Separate toilet and washes rooms for men and women, under S.19 of the Act. Further, under Section.48 (1), mentions to provide crèche facility to employees, where the number of female employees is more than thirty for the proper care of their children under the age of six. And also, Section 66 prohibits women from working in factories between the hours of 6 a.m. and 7 p.m., and no woman can work between the hours of 10 p.m. and 5 a.m., while Ssection.56 states that no woman can work in a factory for more than 9 hours per day.

H. Maternity Benefit Act, 1961- This act makes it easier for women to face the challenges of motherhood by protecting them from unemployment and prohibiting them from doing any work that is harmful to their health or that of their unborn child, in order to ensure women's security, safety, and a favorable working environment.

I. The Information Technology (Amendment) Act, 2008 and Indecent Representation of Women (Prohibition) Act- The two important legislation protect the women from sexual harassment at workplace.

⁹ Indian Penal Code 1860, Sec. 354.

J. The National Commission for Women Act, 1990 and The Protection of Human Rights Act, 1993- The main object the Acts is for the better protection of woman's right with campaigning and better protection of the woman's human rights.

K. International Convention on the Elimination of All Forms of Discrimination against Women (CEDA) Re-ognize the protection of women from sexual harassment protection and also ensures the women to work with dignity. As a result, a law has been passed to give effect to the said Convention for the Protection of Women at Work against Sexual Harassment.

L. Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013- This Act is commonly called the Prevention of Sexual Harassment (POSH) Act, 2013 ("The Act") is a dedicated act containing provisions for sexual harassment at workplace in India. The preamble states that POSH Act is to "provide protection against sexual harassment of women at workplace and for the prevention and redressed of complaints of sexual harassment."¹⁰ Under this Act, a "employee" is defined as a person who is employed at a workplace for regular, temporary, ad hoc work, or on a daily wage, whether directly or through an agent, with or without the knowledge of the principal employer, whether or not for remuneration, working voluntarily or otherwise. Domestic workers will also benefit from it. The Act covers promise of preferential or threat of detrimental treatment in her employment, humiliating behaviour affecting her mental health and creating a hostile or offensive work environment under the ambit of Sexual Harassment at workplace.¹¹ Under the Act, the workplace includes organized as well as unorganized and private as well as public sector workplaces, including the place visited by an employee in the course of employment and a dwelling place or a house, therefore covers almost every possible workplace under its scope.¹² This act provides for the establishment of an Internal Complaints Committee to inquire into the sexual harassment complaints by any woman at the workplace with more than ten employees and if the number of workers is less than ten or the complaint is against the employer, the Local Committee constituted at the district level under the act, will inquire and take action against the sexual harassment complaint by the victim.¹³

JUDICIAL ACTIVISM:

There were no clear, explicit norms in place in India before to 1997 to stop incidents of sexual harassment of women in the workplace. The Indian Penal Code has two sections that provide recourse for women who have experienced sexual harassment at work. Section 354 addresses criminal assault of women with the intention of outraging their modesty, while Section 509 penalizes anyone who uses words, gestures, or acts intended to insult a woman's modesty. The judiciary is the pillar for justice as it not only provides redressal mechanisms against crime to the whole society. The law on sexual harassment has been developed after the 1997 landmark decision of the Supreme Court in the Vishaka v State of Rajasthan.¹⁴ In that case, in compliance with the CEDAW Convention, the Supreme Court defined sexual harassment in the workplace and established criteria for handling it. The Vishaka Guidelines, which were created as a result of the top court's aforementioned ruling, were so significant that they prompted lawmakers to

¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

¹¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 3.

¹² Ibid

¹³ Ibid

¹⁴ AIR 1997 SC 3011.

create the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013. The August 1997 ruling, rendered by a bench consisting of J. S. Verma, Sujata Manohar, and B. N. Kirpal, established the fundamental criteria of workplace sexual harassment as well as protocols for handling it. The Supreme Court played a greater impact through the judgment in *Medha Kotwal Lele v Union of India*,¹⁵ where directions were given to all State and Union territories to amend their respective Civil Service Conduct Rules to specifically include sexual harassment at the workplace. The Supreme Court took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing state governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. In its judgment, the Supreme Court observed that “the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect.”

The Asaram Bapu Case (2013): Asaram Bapu, a self-styled spiritual guru, was charged with rape and sexual assault of a minor girl at his ashram in Jodhpur. The case drew significant media attention and highlighted the abuse of power by individuals in positions of religious authority. Asaram Bapu was ultimately convicted and sentenced to life imprisonment.

The Tarun Tejpal Case (2013): Tarun Tejpal, a prominent journalist and founder-editor of Tehelka magazine, was accused of sexually assaulting a female colleague during an event in Goa. The case garnered widespread attention and sparked discussions about power dynamics and workplace harassment. Tejpal was charged under sections of the Indian Penal Code but has denied the allegations.

CONCLUSION:

India is making rapid progress towards its developmental objectives, and the number of women entering the workforce is rising. One fundamental component of the defense of women's human rights is the recognition of their right to be shielded from sexual harassment. All of this is a step towards giving women the freedom, equality of opportunity, and right to a respectable job. Workplace sexual harassment is a societal issue that requires attention. It is vital to augment the cognizance of employers and workers regarding the types of sexual harassment that may occur in the workplace, means of prevention, and the legal structure pertaining to the prevention and resolution of such incidents. In order to enhance best practices for handling sexual harassment in the workplace and to alert potential victims to different types of sexual harassment so they may avoid them, dissemination and awareness-raising initiatives should be routinely carried out and assessed. Combating sexual harassment in the workplace can be aided by improving training programmes on the subject, offering support, or producing a guidebook on how to avoid it. “While a assassination knock down the physical frame of the victim, sexual harassment break down and degrade the personification of a powerless woman.”

¹⁵ (2012) INSC643.

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