

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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SEXUAL HARASSMENT WOMEN AT WORK PLACE

ABSTRACT

Sexual harassment of women at the workplace is a grave violation of human rights and a critical issue that impedes gender equality, workplace safety, and professional dignity. Despite constitutional guarantees and legal frameworks, including the landmark *Vishaka v. State of Rajasthan* judgment and the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, implementation remains inconsistent, particularly in informal sectors and rural areas. This paper critically examines the socio-legal dimensions of sexual harassment in the Indian workplace context. It analyses the efficacy of current legal mechanisms, explores the challenges faced by victims in accessing justice, and evaluates the role of Internal Committees (ICs), employers, and state institutions in prevention and redressal. The study also incorporates a comparative perspective by briefly examining international legal standards and best practices. Through doctrinal and empirical insights, the paper highlights the urgent need for stronger institutional accountability, gender sensitization, and cultural transformation to create a truly safe and equitable work environment for women.

Keywords: History, Circumstance, Complaint mechanism, Different Legislations, Legal measures in India, NCW, Conclusion.

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INTRODUCTION

Sexual Harassment in the work place is a critical issue that impacts individuals, Organization and society at large. It refers to unwelcome behaviour of a sexual nature that creates a hostile, intimidating or offensive work environment.

Sexual harassment can occur in various circumstances within the work place. Here some common scenario where it may occur like power imbalance hostile work environment, isolated work place, etc. these circumstance is crucial for identify and addressing instance of sexual harassment effectively in the workplace. The issue of sexual harassment in the workplace is widespread and threatens the equality, safety, and dignity of female employees. To ensure a safe and fair workplace, there must be legal protection against this kind of harassment. Globally, a number of laws and rules have been passed with the intention of addressing and preventing sexual harassment of women in the workplace, protecting their rights and holding violators accountable. These regulations usually give definitions of sexual harassment, delineate employer obligations, and offer channels for filing, looking into, and handling complaints. Strong legal protection and efficient enforcement are essential for advancing gender equality, empowering women, and developing a respectful and professional work environment. It has only been very recently that sexual harassment has been defined and recognized .Sexual harassment is best defined as unwanted behaviours of a sexual nature that impact the dignity of women at work. These acts can be physical, verbal, or non-verbal. Both mental and physical are impacted by this issue. And the worker's psychological wellbeing .Sexual harassment has a number of detrimental repercussions, including illness, infidelity, absenteeism, subpar performance, and resignation. Employees who have been the victim of sexual harassment, they experience negative emotions like despair, humiliation, and shame in addition to a decline in their sense of self-worth, job satisfaction, and safety. There is a lack of information in the literature about how employees perceive their workplaces¹.

The Prevention of sexual harassment at work place Act, 2013 is the law in India designed to prevent and address sexual harassment at work place. The Act define Sexual harassment broadly encompassing unwelcome physical contact, sexually coloured remarks, showing pornography ,or any other unwelcome physical, verbal non – verbal conduct of a sexual nature. This Act was aims to

¹ Choo Eern Yie, Nicole Tham Seow ping,[The International Journal Of Humanities & Social Studies],Vol 9 Issue 8,Sexual Harassment in Work place: A Literature Review,29,August 2021.

create a safer and more conducive work environment for women by preventing sexual harassment, providing agencies for redressed and ensuring accountability for offenders. Sexual harassment costs businesses money since it is a kind of sex discrimination and a violation of human rights. Despite the fact that sexual harassment in the workplace is illegal in over 75 countries, it is nevertheless widespread and rarely reported. Laws and commercial incentives alone haven't been enough to end workplace sexual harassment to date. Adopting robust anti-sexual harassment policies, charging businesses more to tolerate unfavourable work environments, and creating a complaints mechanism that shields employees from reprisals are all necessary steps in achieving success.

India's changing sexual harassment law. The ruling in Vishakha in the case of Vishakha And Ors. V. State of Rajasthan and Ors². Women filed a public interest lawsuit (PIL).When Bhanwani Devi, a social worker in Rajasthan ,was brutally gang- raped for opposing child marriage. This marked the first recognition of sexual harassment in the work place. In order to uphold the fundamental rights of working women as stated in Article 14, 19 and 21 of the Indian Constitution, a petition was lunched against the state of Rajasthan and the Union of India.

HISTORICAL BACKGROUND WITH VISHAKA V. STATE OF RAJASTHAN AIR,1997.

The scourge of sexual harassment against women at the workplace has a long and complex history, spanning centuries and crossing geographical boundaries. Despite its pervasive nature, the issue remained largely invisible and unaddressed until the latter half of the 20th century. The women's liberation movement of the 1960s and 1970s brought attention to the problem, but it wasn't until the 1980s and 1990s that the term "sexual harassment" gained widespread recognition. In India, the issue gained prominence in the 1990s, particularly with the landmark judgment in the Vishaka case (1997). This case marked a significant turning point, as the Supreme Court recognized sexual harassment as a violation of women's fundamental rights and mandated employers to create a safe work environment.

² Vishaka & Ors. V. State of Rajasthan & Ors. (1997) 6 SCC 241.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly known as the POSH Act, has a rich historical background that spans over two decades. The journey towards the enactment of this landmark legislation was paved by several significant events, movements, and judicial pronouncements that recognized the need to address sexual harassment against women in India. The women's rights movement in India gained traction in the 1970s and 1980s, drawing attention to problems like inequality, discrimination, and violence against women. The foundation for upcoming legislative changes aimed at defending women's rights was established by this campaign. The Beijing Declaration and Platform for Action in 1995 and the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981 both underlined how important it is for nations to combat harassment and violence against women.

The momentous ruling in Vishaka v. State of Rajasthan by the Supreme Court in 1997 marked a major turning point. The court established the Vishaka Guidelines a set of rules for prevention and redress after recognizing sexual harassment as a violation of women's rights. These instructions underscored the necessity for a specific statute to address workplace sexual harassment and served as a model for the POSH Act. Understanding the circumstances leading to this landmark judgment requires delving into its historical context and the societal conditions that necessitated such a judicial intervention³.

CIRCUMSTANCE WHICH AMOUNT TO HARASSMENT

The stark power disparity between superiors and subordinates is the primary cause of sexual offenses in organizations. The supervisor has the authority to reward and punish subordinates, assess their performance, recommend changes to their pay and promotions, and even determine whether or not to keep an employee on staff. Conversely, subordinates desire favourable performance evaluations, pay raises, and similar benefits. Conversely, resources that the majority of subordinates view as scarce and important are under the supervisors' control. Top managers in positions of authority may think that sexual harassment of female subordinates is just another way for them to demand things from people in lesser status. Proof is a challenge when it comes to claims of sexual harassment. These accusations frequently turn into one

³ Arpit agrawal, <https://www.studcou.com>

individual testifying against another. Therefore, it's thought that the majority of offenses go unreported to corporate representatives or governmental organizations.

So, Sexual harassment refers to when a victim reports her boss to others. The victim of harassment experiences hardship and suppresses it at the expense of their civil rights. The majority of women are not interested in suing them. The fear of social isolation and economic vulnerability is the rationale behind the suppression of harassment. The supervisors' power over resources means that those who are harassed are scared to speak up for fear of the supervisors taking revenge. Peers who are sexually harassed can also be influenced by co-worker who lack authority and status. In order to sexually abuse a female co-worker in the company, the co-workers also use their power.

COMPLAINT COMMITTEE

The Act provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All Complaints Committees must have 50 per cent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.

I. INTERNAL COMPLAINT COMMITTEE

The POSH Act, 2013 has the provision of establishing the committees to assist the aggrieved women or the victims of sexual harassment. Under Section 4 of the said Act, the employer of every organisation is ought to set up an Internal Complaints Committee (ICC). The purpose of this body would be to address the complaints of sexual harassment and assist the victims to protect their dignity at the workplace. Every institution or organisation needs to have an ICC mandatorily and non-constitution of ICC can attract a penal liability for the employer.⁴

the POSH Act, the employer must indicate that the term of office for each member of the ICC cannot exceed three years from the date of nomination.

⁴ Sarthak Kulshrestha, The nature and Working of the sexual Harassment Committee Constituted under the Sexual Harassment Act, <http://blog.ipleaders.in>

II. LOCAL COMPLAINT COMMITTEE

Local Complaints Committee (LCC), established pursuant to Section 6 of the POSH Act, is provided for. This provision states that the District Officer is responsible for forming the LCC on behalf of the entire district. Every block, Taluka, and tehsil in the rural or tribal area, and every ward or municipality in the urban area, must have a nodal officer designated by the district officer. Within seven days of receiving a complaint, the designated nodal officer is required to transmit it to the relevant LCC.⁵

DIFFERENT LEGISLATIONS IN DIFFERENT COUNTRIES

Sexual harassment is a widespread problem that has varied degrees of intensity and impact on people all around the world. Consequently, several nations have passed laws to stop, outlaw, and address sexual harassment in a variety of settings, including the workplace. The purpose of this comparative legislative study is to compare and evaluate sexual harassment laws across national borders, emphasizing best practices, variances, and commonalities. Gender is without a doubt the most important predictor of sexual harassment, making it a global problem. Despite this, there is a growing number of people reporting sexual harassment at work and following the legal procedures in their individual nations to file complaints. It mostly affects women, and men are the ones who do it most of the time. Sexual harassment is thus acknowledged as a major issue that affects employees in their employment in many parts of the world.

⁵ Sharadaa & monica, Prevention Of Sexual Harassment Of Women At Workplace

INTERNATIONAL LAWS AND POLIECS FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE

- The Convention on The Elimination of All Form of Discrimination Against women.
- Declaration on The Elimination of Violence against Women
- United Nations Fourth World Conference on Women
- The Discrimination (Employment And Occupation) Convention, 1958
- Indigenous and Tribal People Convention, 1989

LEGAL MEASURES IN INDIA

Sexual harassment infringes on women's fundamental rights, particularly the right to equality enshrined in Articles 14 and 15 of the Indian Constitution, as well. As the right to life and a dignified existence enshrined in Article 21. The Indian Constitution's Preamble promises that all citizens will have "equality of status and opportunity. The constitutionally protected fundamental rights support the elimination of sexual harassment at the workplace. The Supreme Court has undoubtedly taken a courageous step in protecting women's rights by establishing rules for an issue that had not received adequate attention. Until 1997, after decades of independence. The Bhanwari Devi case and an analysis of the 1997 ruling in Vishaka and Ors. v. Union of India ⁶serve as the foundation for the concept of sexual harassment. These instances illustrate the factors that contribute to the periodic spike in sexual harassment cases. Angles of view. One perspective is presented differently by the Court's involvement in matters involving sexual harassment of women. It proves that the judiciary has understood its place in bringing about social change and has used its authority wisely. A woman who experiences sexual harassment loses out on growth and development in addition to her physical beauty. India is the country where women are most at danger of sexual assault, cultural practices, and human trafficking, according to a 2018 Thomson Reuters Foundation survey. Based on three topic questions the danger of sexual violence and harassment against women, the threat posed by cultural, tribal, and traditional practices, and the country where women are most vulnerable to human trafficking, which includes

⁶ Vishaka and others V. Union of India (1997)6 SCC 241

forced labour, sex slavery, and domestic servitude the second most populous nation in the world, home to 1.3 billion people, was deemed the most dangerous, according to the foundation. Because of this, even after gaining independence, India has not been able to make significant progress in terms of women's safety and empowerment.⁷

The Indian Constitution's Preamble seeks to ensure that all of its citizens have equal access to opportunities and status. The equality doctrine is mentioned in articles 14, 15, 16, and 17 of the constitution. A wide guarantee of equality for all is established by Article 14's right to equality before the law or equal protection under the law. Article 15(3) establishes the concept of substantive equality in favour of women and gives the state the ability to take specific measures for women in response to the historical obstacles that women have suffered. Discrimination on the grounds of religion, ethnicity, caste, sex, or place of birth is forbidden by Article 15. It was not until the mid-1990s that sexual harassment was acknowledged by Indian courts. The court in *Rupan Deol Bajaj V. Kanwar Pal Singh Gill*⁸ recognized sexual harassment as a crime under section 354 of the Indian penal code, despite the fact that it defined "outraging the modesty of women" to encompass "outraging the dignity of a woman." Furthermore, the court noted that it constituted an unfair labour practice to fire a female employee for reporting sexual harassment in the *Saudi Arabian Airlines V. Shehnaz* case⁹.

i. THE CONSTITUTION OF INDIA 1950:

The Constitution's preamble provides "equality of status and opportunity," but 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 guarantee 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 effect is neutralized and the woman is granted a

⁷ Dr.Pallavi Singh & Mr.Radha Rajan, Sexual Harassment of women at workplace: A study of Indian Legislation and Judicial Approach, *Indian Journal of Law and Legal Research*, Volume 4 ,page 1,February 2022,<http://www.researchgate.net>

⁸ *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*,(1995) SCC (6) 194

⁹ *Saudi Arabian Airlines v. Shehnaz* case,(1999 (1) BOMCR643

particular position or status. Sex discrimination is prohibited in public services by Article 16(2).

ii. INDIAN PENAL CODE, 1860 AND CRIMINAL LAW (AMENDMENT) ACT,2013

According to Section 354 of the IPC, there is a minimum one-year sentence and a maximum five-year term for assault and criminal force used with the intention of offending women's modesty. Despite the fact that the term "modesty," which is often used, is not defined, Section 509 punishes any speech, act, or gesture meant to hurt women's modesty. The punishments include simple imprisonment for a maximum term of three years and a fine. A physical or sexual assault is dealt with in Section 375, 376, 376A, 376D, 326A, and 362B, where the punishment is one year along with a fine that can go up to death.¹⁰

iii. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946:

The Act requires companies to publicly disclose and discuss the working conditions of their workforce. The Act is a substantive legislation that defines sexual harassment as misconduct, punishable by an employer's suspension or termination.¹¹

iv. THE NATIONAL COMMISSION FOR WOMEN ACT, 1990 AND THE PROTECTION OF HUMAN RIGHT ACT, 1993:

A woman has the option to file a complaint directly with the State or National Commissions for Women if she experiences any form of sexual harassment at work. In addition to ordering the employer to launch an investigation and propose that the harasser in question be suspended with immediate effect while the investigation is ongoing, the Women Commission will monitor the complaints and notify the relevant police stations to begin criminal proceedings.¹²

¹⁰ B.M. Gandhi, Indian Penal Code, (Kumar Askand Pandey 2006)

¹¹ S.N. Misra, Labour and Industrial Laws 1&2, (Central Law 2013)

NATIONAL WOMEN COMMISSION

The National Commission for Women (NCW) is a statutory body established in 1992 under the National Commission for Women Act, 1990. One of the primary objectives of the NCW is to protect women from sexual harassment at the workplace. Additionally, the Act seeks to improve respect for women's rights. The Act's main goals are to stop women from being exploited and objectified and to uphold their dignity and modesty. To combat the problem of sexual harassment in the workplace, the NCW has launched a number of programs. Among these are Developing guidelines for employers to prevent sexual harassment, Providing training and awareness programs for employees and employers, conducting investigations into complaints of sexual harassment, Recommending penalties for employers who fail to comply with the guidelines.

CONCLUSION

India has a strong legal framework to protect women from sexual harassment at work, many women employees remain unaware of their rights and the resources available to them. This awareness gap is a significant obstacle to effective implementation, as women employees are unable to seek protection under the law if they are not aware of its provisions. The lack of awareness is attributed to the absence of training and awareness programs, which are essential for empowering women employees. Women employees will be better equipped to recognize and report incidents of sexual harassment, and seek support from internal complaint committees and other resources.

The effective implementation of the legal framework requires a multifaceted approach that involves not only policy changes but also a cultural shift. Organizations must foster a culture of respect, empathy, and zero tolerance for sexual harassment. By prioritizing awareness, training, and implementation, we can create a safe and respectful work environment where women employees feel valued, empowered and protected.