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# **SEXUAL HARASSMENT AT THE WORKPLACE: A PERSISTENT THREAT TO WOMEN'S RIGHTS AND EQUALITY**

AUTHORED BY - ANJANEE GOEL<sup>1</sup>,  
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## **ABSTRACT**

The researchers delved into the society's mindset on women's treatment in this study paper. This research looks at the widespread problem of women being sexually harassed at work. Aside from being a violation of women's basic rights and a violation of the constitution, sexual harassment in the workplace is one of the most common forms of violence against women in India.

With reference to some of the most significant recent examples, this paper examines the various manifestations of harassment, such as unwanted physical contact, verbal abuse, and unwanted sexual approaches. It highlights the detrimental effects of harassment on women's mental, emotional, and professional health, emphasising elevated levels of anxiety, despair, and discontent with their jobs. The well-known case of Vishakha and others v. State of Rajasthan, which led to the introduction of the Vishakha Guidelines, is also covered in this paper. Article 141 of the Indian Constitution acknowledges the rules as law, which were promulgated by the Supreme Court.

In addition, this essay will discuss the most well-known example of the RG Kar Medical College rape and murder case, which simultaneously illustrates the crimes of rape, sexual harassment at work, and murder. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 safeguards women employed in both public and private sectors from all forms of sexual harassment in the workplace.

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This paper indicates making some suggestions to the government to pay special attention towards appointing the monitoring team to visit the government offices as well as the private sector (unorganised) to prevent sexual harassment against women at the workplace.

## INTRODUCTION

According to the Women, Peace and Security Index of 2023, which was issued by the Georgetown Institute for Women's Peace and Security, India ranks 128<sup>th</sup> out of 172 nations when it comes to women's inclusion, justice, and security. There was a 12.9% increase in crimes committed against women in India between 2018 and 2022, as reported by the National Crime Record Bureau (NCRB). Hostile behaviour towards a woman is considered a felony.<sup>4</sup>

As one knows that the female section of the society was cracked down by the patriarchal society where the sole providers of the family were the male. But, with the gradual increase in the women employees, the lewd behaviour of the male category of employees and employers at workplace in India, inappropriate behaviour at work environment has increased by the time. The phenomenon of sexual harassment is intricately linked to the gender or social roles ascribed to men and women within social and economic contexts, alongside societal perceptions of male and female sexuality, rather than being primarily rooted in the biological distinctions between the sexes. Sexual harassment arises everywhere and on a daily basis; it is not a pandemic rather an epidemic.

Work environment unfitting behaviour not just makes an undependable and threatening workplace for the woman yet, additionally prevent their capacity to convey in the present contending world as per the circumstances, it causes serious harm and is also the strongest symptom of sex discrimination in the workplace. The issue of sexual harassment in the workplace has persistently been a significant concern globally. Nowadays, sexual harassment of women at workplace is an extremely significant type of violence, which has been broadly defined for legal purposes this paper shows that harassment is degrading, terrifying, and in some cases, it can be violently physical; very often lasts a long time; and may lead to deep job-related, psychological, and health-related consequences.

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<sup>4</sup>2023 WOMEN, PEACE & SECURITY INDEX GIWPS, <https://giwps.georgetown.edu/the-index/#:~:text=Georgetown%20Institute%20for%20Women,%20Peace%20and%20Security%20How%20does%20your> (last visited Sep 25, 2024)

## WHAT IS SEXUAL HARASSMENT?

The word “sexual harassment” is defined under **Section 2(n) of POSH Act<sup>5</sup>**. This pertains to inappropriate sexual propositions, remarks of a sexual character, solicitations for sexual favours, and harassment or observations regarding an individual's gender, all of which contribute to a detrimental workplace atmosphere. Sexual harassment frequently occurs at the hands of individuals who hold positions of authority over the victim, including employers, supervisors, and educators. Conversely, it can also be perpetrated by peers within the same environment. Sexual harassment at work against women is a prevalent and hamper situation that affects millions of women around the globe.

Harassment pervades one's place of work and can be classified into verbal, nonverbal, and physical harassment. It is considered a nature that involves unwanted comments, jokes, or questions of a sexual nature through the spoken word. It may include unwanted gestures, stares, touching, displaying sexist or abusive pictures, posters, unwanted touching, grabbing, or any other physical contact. Serious problems will arise for the victim, which can involve anxiety, depression. It will even also hinder them at work and their interpersonal relationships and overall life situation. Sexual harassment must not be described as a female-only phenomenon. Although it may hit both males and females, it is more common among females. Employees are required to prevent sexual harassment at work by providing education, ensuring they have an attainable policy, and dealing effectively with cases reported in case of sexual harassment. Victims of sexual harassment should not be stigmatized or embarrassed, but supported and believed.

Harassment to working woman at the place has several aspects, under-payment is the main issue of harassment. Various studies have been carried out to know the reasons of underpayment to working woman. The reasons include their frequent absence at the workplace due to childcare, household responsibilities, under education, lack of training, marriage, pregnancy, in our prevailing social conditions, a woman goes out for employment only when;

1. The family lacks an income-generating member.

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<sup>5</sup> "Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: -

- i. physical contact and advances; or
- ii. a demand or request for sexual favours; or
- iii. making sexually coloured remarks; or
- iv. showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

2. The two ends fail to converge, or
3. The income-generating individual does not provide support.<sup>6</sup>

Women may be found working in any place, like manganese mines, contraction work, hotels, bank, postal services, education, health, tourism, transport etc. Thousands of women are working as domestic servants also. In the unorganised and services sectors there is sexual exploitation of woman. In most of the cases no complaints are filed. Working woman are obliged to shoulder household responsibilities. Under the circumstances, they find no leisure to rest. Article 14<sup>7</sup>, of the Indian constitution guarantees equality, but woman are the victims of social, economic cultural and legal inequality. In one case, it was held that female teachers are entitled to the same salary as is paid to the male teachers of the same institution. In the *State of Maharashtra v. Madhukar Narain* one police inspector visited the house of Bhanubai and then demanded for sexual favour. On refusal he tried to exploit her forcibly. During the prosecution, the police officer's defence was that she was a lady of easy virtue. The defence was rejected by the court and the supreme court held that the right to privacy is available even to women of easy virtue. It was held liable for violating her right to privacy which is provided under article 21 of the Indian constitution. In one case the Supreme court held that "women also have the right to life and liberty. Women have the right to be respected and treated as equal citizens. They have a right to lead an honourable and peaceful life."

### Types of sexual harassment

1. **Quid pro que sexual harassment** – When a designated senior demands an undesirable action from a female employee in exchange for a favour in the return. This concept is basically called "this for that".
2. **Hostile environment** – It develops when a worker engages in specific sexual actions on a regular basis.

### Typical dynamics in instances of sexual harassment encompass:

- **Perpetrator:** employer, supervisor, colleague, client, educator or academic instructor
- **Individual:** male or female, a person occupying a subordinate position, potentially someone other than the individual experiencing harassment, such as an observer of sexually inappropriate conduct.
- **Location:** workplace, educational institution, university, or alternative setting

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<sup>6</sup>Women and Criminal Laws by B.S. Khetrapal / Puja Khetrapal

<sup>7</sup> THE CONSTITUTION OF INDIA, 1950, Article 14

- **Gender:** dynamics reveal that both perpetrators and victims can belong to any gender, and the perpetrator is not exclusively of the opposite gender.

In contemporary society, women encounter the pervasive issue of sexual misconduct within the workplace, highlighting a significant dilemma we must confront.

Sexual crime percentage is increasing day by day as by NCRB DATA. Various types of sexual crime are discussed below.

**Rape-** Rape is the most common type of crime in India a woman is raped every 29 minutes. Rape in India is a cognizable offence. The word rape is defined under section 63 of BNS, 2023 it defines rape and its punishment is also prescribed there.<sup>8</sup>

“**Gang Rape** is defined under, Section 70. (1) of BNS, where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.”<sup>9</sup>

## THE #METOO MOVEMENT

The movement started one decade ago in year 2006 by an American woman TRANA BURKE against sexual harassment, molestation specially in the workplace. But it came into the society in year 2017 as a big movement on the social media platform in America.<sup>10</sup>

When there a big star Elice Milena tweeted in her twitter account after that woman started raising voice on social media revealing their stories online so that people can get awareness for this movement and they can start taking actions against sexual harassment.

<sup>8</sup> THE BHARATIYA NYAYA SANHITA, 2023, Section 63

<sup>9</sup> ANJANA PRAKASH & ANUJ PRAKASH, CONCISE COMMENTARY ON THE BHARATIYA NYAYA SANHITA, 2023 (LexisNexis) (2024)

<sup>10</sup> THE #METOO MOVEMENT GOOGLE BOOKS, [https://books.google.co.in/books?hl=en&lr=&id=DBTHEAAAQBAJ&oi=fnd&pg=PP1&dq=me%2Btoo%2Bmovement&ots=7aYbE3wPiY&sig=X8HXKA6qQhuACa8X-JdQ2h\\_nBe4&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.in/books?hl=en&lr=&id=DBTHEAAAQBAJ&oi=fnd&pg=PP1&dq=me%2Btoo%2Bmovement&ots=7aYbE3wPiY&sig=X8HXKA6qQhuACa8X-JdQ2h_nBe4&redir_esc=y#v=onepage&q&f=false) (last visited Sep 25, 2024)

This is all about #MeToo movement but **why and how it is becoming popular in India.**

It is quite evident that India possesses a range of online social media platforms that enable individuals to connect with one another and learn about social networking and their lives. India is recognised as a spiritual country, yet it faces issues of sexual harassment and sexual assault.

Being Indian, one might observe a lack of kindness and innocence in the society. It is evident to anyone that India is a country where women face sexual harassment and molestation in their workplaces on a daily basis. After numerous cases of sexual harassment, women from all walks of life united to create a widespread movement.

### **The impact of sexual harassment:**

The impact of sexual harassment is not only on the victim but also on an organization.

#### **On the Victim**

In almost every situation, incorrect behaviour has a very substantial negative impact on the individual. It influences a person's capacity for work, causes anxiety, discontent, fury, and many more increasingly similar feelings of pressure, and a person lives in a state of steady pressure. In addition, the unlucky victim feels guilty and embarrassed (transgression), agitated, tense, or disheartened, they come to distrust their fellow representatives. They generally speaking, avoid working. Lack of assurance and faith in oneself and the work that they accomplish. In addition, they suffer the negative bodily impacts of pressure, for instance, headaches, backaches, and sleep disorders, and their public behaviour also gets ruined a life. An increasing number of unfortunate victims suffer the consequences of disorder of inappropriate behaviour.

#### **On the Organization**

Many people mistakenly believe that the effects of obscene behaviour only affect the victim, however this is untrue. It has a significant impact on the association. The entire environment becomes unpleasant and unsuitable for coworkers, lovers, and work relationships. Likewise experience severe influence. It results in decreased efficacy, profitability, and a decline of confidence in the workplace.

#### **On the Society**

The impact of sexual harassment in the workplace cannot be overlooked it creates a negative

impact on the society at large. Sexual harassment may affect everyone since it creates an atmosphere that prevents workers from thriving. Some possible repercussions of sexual harassment at work include the following:

1. Emotional and physical issues-

Stress, despair, and anxiety are among the emotional and psychological harms that victims of sexual harassment frequently experience. They frequently feel less confident and good about themselves. Physical health issues including headaches, nausea, weight swings, and lack of appetite and sleep might occur.

2. Professional and financial problems –

A victim's job performance and career path can be severely impacted by sexual harassment. Fear and a lack of confidence can lead to some people withdrawing from their coworkers and the office. They are more prone to disregard their responsibilities, get distracted, and be late. Sexual harassment victims who disclose the harassment may experience obstacles to their career progress, such as being excluded from important meetings or passed over for promotions.

## **SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013**

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013 was enacted on 9 December 2013. This act was passed in the view with the case of *Vishakha v. State of Rajasthan*. Before the Vishakha guidelines, the women had to take matters of sexual harassment at the workplace by complaining under section 74<sup>11</sup> and 79<sup>12</sup> of Bhartiya Nyaya Sanhita.

Following a protracted period of 16 years since the Vishakha case, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted in 2013. This legislation aims to establish safeguards against the sexual harassment of women in professional environments.

It is essential to recognise that sexual harassment infringes upon women's fundamental rights

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<sup>11</sup>THE BHARATIYA NYAYA SANHITA, 2023, Section 74- Assault or Use of Criminal Force to Woman with Intent to Outrage Her Modesty.

<sup>12</sup> THE BHARATIYA NYAYA SANHITA, 2023, Section- Word, gesture or act intended to insult modesty of a woman.

to equality as enshrined in Articles 14 and 15 of the Indian Constitution. Furthermore, it undermines their right to life and dignity as articulated in Article 21, along with their freedom to pursue any profession, trade, or business. This addresses the entitlement to a safe environment devoid of sexual harassment.

**Development of laws in India regarding to sexual harassment of women work place-**To date, India has no laws pertaining to sexual harassment, not even under the constitution, IPC, or other laws. The need for gender justice is becoming more widely recognized, and along with this comes a greater effort to prevent these violations and a growing amount of hatred toward sexual harassment instances.

For the first time, the Indian Supreme Court acknowledged sexual harassment in the workplace as a human rights violation in 1997. The pivotal decision in the Vishaka and Others v. State of Rajasthan case formulated a framework for addressing and managing allegations of workplace sexual harassment against women. The regulations mandate that enterprises uphold a secure environment for their female workforce, incorporating both proactive and remedial measures to guarantee their safety in the workplace. Moreover, even though the Vishaka ruling has been in effect for nearly a decade, there have been few efforts to implement the directives. Indeed, numerous public and private organisations have yet to amend their service regulations or form complaints committees, as stipulated by the recommendations.

Under **Article 141** of the Indian Constitution, “*The law declared by the Supreme Court of India shall be binding on all courts within the territory of India*”, When a person is sexually harassed his/her fundamental rights under **Article 14** which says that “*The state shall not deny any person equality before the law or the equal protection of the laws within the territory of India*”, **Article 15(1)** which is says that “*The state shall not discriminate against any citizen grounds only of religion, race, caste, sex, place of birth or any of them*”, **Article 16(1)** which says that “*there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State*”, **Article 19(1)(g)** which allows “*to practice any profession, or to carry on any occupation, trade or business*” and **Article 21** which says that “*No person shall be deprived if his life or personal liberty except according to procedure established by law*” is violated.

**Below mentioned are more Related cases: -**

**1. R.G. Kar Hospital rape and murder case, 2024<sup>13</sup>**

The brutal assault and murder of a young and aspiring doctor within the boundary of the RG Kar Medical College in Kolkata has sent side effect throughout the medical community and the whole country, eclipsing over the states and the nation's healthcare systems.

The individual affected, a 31-year-old female, was engaged in her second year of postgraduate training within the pulmonology department. The discovery of her body on the floor of the seminar room within her department on the hospital campus is profoundly unsettling, particularly in a space that should have offered her safety and the support of her colleagues and the community she dedicated herself to serving. The principal of the institution, having been assaulted and inadequately clothed, was duly informed; nonetheless, no proactive measures were implemented. The initial general diary was documented by the Tala Police Station, which subsequently gathered 40 exhibits from the crime scene prior to the lodging of the First Information Report with the police. An expedited inquiry was carried out in the presence of two female physicians, as mandated by the Additional Chief Judicial Magistrate of the Sealdah court. It disclosed numerous injuries across the abdomen, left leg, right hand, lips, neck, genital region, along with indications of strangulation. On the 18th of August, the Supreme Court of India initiated Suo-moto cognisance. A directive was issued for the establishment of a national task force comprising distinguished physicians and healthcare administrators, tasked with formulating an action plan aimed at preventing gender-based violence and advocating for a respectful working environment for interns, as well as both resident and non-resident doctors.

It is our conviction that the Indian healthcare system requires a profound transformation, and the moment has arrived to:

1. It is imperative to thoughtfully evaluate the establishment of a universal public healthcare system in this nation by augmenting the health budget from a mere 1.2% of our GDP to a minimum of 5% (for comparison, the US allocates 17% and European countries range from 9% to 11%).

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<sup>13</sup> WHEN TRUST IS BETRAYED: THE HORRIFIC RAPE-MURDER OF A YOUNG ...: CURRENT MEDICINE RESEARCH AND PRACTICE LWW, [https://journals.lww.com/cmre/fulltext/9900/when\\_trust\\_is\\_betrayed\\_\\_the\\_horrific\\_rape\\_murder.1.aspx#JCL-P-3](https://journals.lww.com/cmre/fulltext/9900/when_trust_is_betrayed__the_horrific_rape_murder.1.aspx#JCL-P-3) (last visited Sep 25, 2024)

2. Discontinue the alliance between politicians and medical professionals, and eliminate favouritism and corruption in the processes of appointments, transfers, and hospital acquisitions.
3. Acknowledge and commend accomplishments based solely on their intrinsic value.
4. Vigilantly oversee the operations of both public and private sectors, scrutinising their activities, fees, and profits, while promoting the creation of non-profit, trust-managed organisations.

## **2. Apparel Export Promotion Council vs A.K. Chopra, 20 January, 1999<sup>14</sup>**

The respondent was working as a Private Secretary to the chairman of the Apparel Export Promotion Council. The Chairman was alleged for sexually harassing the woman employee of the Council. She was a new joiner at the company and was placed as a typist cum clerk. A day she was asked to take a dictation even though she was not competent to for the task, but forced by the chairman to work out the task. She was taken to Business centre at Taj Palace Hotel for the task and type out the matter. While waiting for the Director (Finance) to come to the room Chairman tried to sit too close to her despite her objection, he did not give up his objectionable behaviour. The respondent continued his lewd behaviour despite of threatening him of threatening consequences by the petitioner.

Then the respondent tried to molest her physically in the lift also while coming to from the basement of the hotel. On the other day the petitioner filed a complaint against the Chairman for sexually harassing and molesting her.

It was held within the judgment of Apparel Export Promotion Council v. A.K. Chopra case that it played a significant role in shaping the legal framework regarding sexual harassment in Indian workplaces. It established the principle of vicarious liability, reinforcing the employer's responsibility to stop and address sexual harassment incidents.

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<sup>14</sup> Apparel Export Promotion Council v. A.K Chopra., Supreme Court of India, judgment, law, Casemine.com <https://www.casemine.com>, [https://www.casemine.com/judgement/in/5609ad5de4b0149711411314#:~:text=CaseIQ.%20\(AI%20Recommendations\)%20Apparel%20Export%20Promotion%20Council%20v.%20A.K%20Chopra](https://www.casemine.com/judgement/in/5609ad5de4b0149711411314#:~:text=CaseIQ.%20(AI%20Recommendations)%20Apparel%20Export%20Promotion%20Council%20v.%20A.K%20Chopra) (last visited Sep 25, 2024)

## WHAT CAN ONE DO WHEN THEY WITNESS SEXUAL HARASSMENT?

One may have heard the term **bystander intervention**<sup>15</sup>, to describe, stepping in to help if one sees someone who might be in danger or at risk for sexual assault. Bystander intervention can also be a helpful strategy if one witnesses sexual harassment. One doesn't have to be a hero to make a positive impact in someone's life, and one can intervene in a way that fits their comfort level and is appropriate for the situation. If they choose to step in, they may be able to give the person being harassed a chance to get to a safe place or leave the situation. Sexual harassment can be prevented through the following:

### a. Make a diversion

One should try their best to stop the harassment or divert the attention of the harassers. However, keep in mind that one should never do something that could endanger themselves. Do not confront someone if they appear to be on the verge of becoming aggressive.

### b. Make a straight inquiry

Have a direct conversation with the harassed individual. Offer to go with them whenever they have to meet with the harasser if they are experiencing harassment at work or school. If they are worried about walking alone to their car at night, offer to go with a friend.

### c. Refer to an authority

Have a direct conversation with the harassed individual. Offer to accompany them during any meetings with the individual causing distress, should they be facing harassment in their workplace or educational institution.

Offer to accompany a buddy if they are alarmed about walking to their car by themselves at night.

## CONCLUSION

The matter of sexual harassment against women in the workplace culminates in a conclusion that underscores the imperative for systemic reforms to foster a respectful and secure atmosphere. It is imperative that laws and regulations be established and adhered to. This involves establishing precise protocols for the reporting of harassment and guaranteeing responsibility. The primary focus of this research paper is the assistance provided to victims.

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<sup>15</sup> Bystander intervention is about **noticing a problematic situation and making the decision to get involved**. A bystander is someone who witnesses a situation but isn't actually involved in it. They're simply a witness, someone who happens to be there.

It is imperative to guarantee that victims possess robust support networks. This encompasses counselling, legal support, and ensuring that the act of reporting harassment does not lead to retaliation. Consistent training and awareness initiatives can effectively enlighten employees regarding the parameters of harassment and the strategies for its prevention. Organisations can implement measures to eradicate sexual harassment and foster a more secure and inclusive workplace for everyone by confronting these challenges head-on.

