

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

A Critical Study for Sexual Harassment of Women at Workplaces: From Legal and Preventive Perspective

MANJU¹ AND DR. NEHA ARYA²

ABSTRACT

In India today, sexual assault and harassment are the two most common types of violence against women. Sexual harassment, which was legalized in 1976, is acknowledged as a type of bias against women on the basis of sexual orientation. Additionally, this includes unwanted and sexually motivated behavior such as unwanted physical contact and advances, requests for or demands of sexual favors, remarks with sexual overtones, the display of pornography, and other unwanted physical, verbal, or non-verbal conduct of a sexual nature at all workplaces where women are employed in the public or unorganized (private) sectors of government. In the past, sexual harassment against working women was not reported as a crime because it typically does not involve a public presence. As a result, these crimes were classified as "Dark figures of crime" and "Noiseless crime." To stop these kinds of harmful actions against women, the government passed many laws and established a preventive system. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which was just put into effect, aims to safeguard women from all forms of sexual harassment at their places of employment in the public and unorganized (private) sectors. Therefore, the purpose of this paper is to offer some recommendations to the government on the appointment of a monitoring team to visit both government offices and the unorganized (private) sector. Additionally, NGOs, the media, academics, and other non-profit groups should be raising awareness and carrying out monitoring tasks to stop harassment of women at the workplace. At this point, the descriptive research methodologies used in this study will be combined with secondary data gathered from books, journals, magazines, relevant statistics, laws, and online sources that are linked to women's harassment.

Keywords: Sexual Harassment, Workplace, Prevention of Sexual act.

I. INTRODUCTION

In India, sexual harassment is seen as a serious type of violence against women and might be

¹ Author is a Research Scholar at Baba Mast Nath University, Rohtak, Haryana, India.

² Author is an Assistant Professor at Baba Mast Nath University, Rohtak, Haryana, India.

the subject of legal action. The term "sexual harassment," which entered the mainstream in the 1970s, is now understood to refer to a specific kind of sexual discrimination against women. Physical contact and approaches, requests or demands for sexual favors, comments with a sexual overtone, the presentation of pornography, and any other unwanted behavior of a sexual character are all included in the definition of sexual harassment. ³**Tuka Ram And Anr vs State of Maharashtra (1972)** It does not matter whether you live in a developed, developing, or under-developed country; sexual harassment in the workplace is an issue everywhere.

This kind of violence, including cruelties and horrors committed against women, is pervasive and typical in every society. Both sexes suffer from this unfortunate and troublesome outcome. As the weak and powerless members of society, women have been shown to be the primary targets of this phenomenon in patriarchal societies. Harassment of women occurs in both the public and the private (unstructured) sectors of the labor force. ⁴**Mukesh & Anr. vs. State for NCT of Delhi & Ors** For the most part, sexual harassment in the workplace is not reported because of the nature of the crime and because it does not result in an outward manifestation of the problem.

So, we have metrics for "Noiseless Crime" and "Dark Figures of Crime". Women in the working class, whether they work in the government or the un-organized (private) sector (in locations like factories or elsewhere), are often the targets of sexist remarks and actions from both their coworkers and superiors. Yet many of these violations were never reported. Almost twenty-five years ago, in 1995, female police officers at Bangalore Central Jail complained about sexual harassment from higher-ranking authorities. As cited Not only that, but women airport announcers have complained of inappropriate behavior from their superiors.

II. CONCEPT AND UNDERSTANDING OF SEXUAL HARASSMENT

Additionally, it has a definition. All forms of unwanted sexually-oriented behavior, whether physical, verbal, or nonverbal, fall under the umbrella term of "sexual harassment." (Physical contact or advance, A demand or request for sexual favors, making sexually colored remarks, Showing pornography, Some other physical, oral or non-verbal manner of a sexual nature. Sexual harassment at the workplace can take numerous practices. It can include behavior such as:

- Undesirable touching, embracing or kissing

³ Tuka Ram And Anr vs State of Maharashtra (1972)

⁴ Mukesh & Anr. vs. State for NCT of Delhi & Ors (2012)

- Staring or insulting
- Expressive commentaries or jokes
- Unwelcome or obstinate requests to go out
- Disturbing questions about another person's private life or body
- Intentionally scrubbing up against someone
- Insults or mocking of a sexual nature
- Sexually obvious pictures, placards, display savers, emails, tweets, text messages or prompt messages
- Accessing sexually explicit internet sites
- Inappropriate signs of progress on social networking sites”
- “Any action that might constitute a crime under the Indian Penal Code, such as a physical assault, indecent exposure, sexual assault, harassment, or the transmission of sexually explicit material (Sources from Website of Ministry of Women and Child Development, 2019, Govt of India).”

In 1997, the Indian Supreme Court issued a landmark ruling in the case ⁵Vis haka and others Vs the state of Rajasthan (1997), which provided a clear definition of sexual harassment in the workplace, highlighted important preventative, prohibitive, and redress actions, and indicated the need for legislation to enforce the proposed guidelines. ⁶**Medha Kotwal Lele & Ors. V. Union of India & Ors** The author tries to pin down a definition for sexual harassment and comes up with the following:

1. “Actual or attempted rape (or) sexual assault.
2. Undesirable cautious touching, leaning over, cornering or pinching.
3. Unwelcome sexual teasing, jokes, remarks or questions.
4. Whistling at someone.
5. Kissing sounds, howling and smacking lips.
6. Touching an employee's clothing, hair or body.
7. Touching or rubbing oneself sexually around another person.

⁵ Vis haka and others Vs the state of Rajasthan(1997)

⁶ Medha Kotwal Lele & Ors. V. Union of India & Ors

III. GENERAL IMPACT AND CONSEQUENCES OF SEXUAL HARASSMENT

In most cases, sexual harassment in the workplace has a negative effect on women, and the victims may experience a range of mental, emotional, and physical health issues as a result. On the Organization: Reduced productivity and morale among workers; ⁷**Independent Thought vs. Union of India and Anr**(higher costs associated with recruiting and retraining staff The awful result is high legal bills, penalties, and a tarnished reputation. "On the Individual and Organization Reduction in work competence; Loss of inspiration; Absenteeism at work; Mislead out on training/promotion/resignation/removal. On the Individual: Emotional: Disgust, Annoyance, Hatred, Anxiety, Humiliation, Guiltiness, Misperception, Ineffectiveness, Psychological: Fretfulness, Nerviness, Sadness, and Low Self-confidence" Physical: Low blood pressure, insomnia, headaches, nausea, and ulcers. This is to emphasize that a victimized woman may experience the aforementioned symptoms not just as a direct consequence of harassment but also as a sum total of harassment, retaliation, counterattack, and/or attribution.

IV. LEGAL PROVISIONS ON SEXUAL HARASSMENT AGAINST WOMEN AT WORKPLACES IN INDIA

Courts in India are required to uphold "fundamental freedoms," which are defined as "privileges pertaining to life, freedom, equality, and pride of the person" under the Protection of Human Rights Act of 1993. ⁸**Seema Lepcha vs State of Sikkim and Others**

It is in the best interests of all parties for people in positions of power in organizations and political parties in India to uphold decisions that make clear that they expect women to avoid engaging in physically intriguing ways of behaving, as the Indian Constitution protects everyone's right to live with pride and harmony. As of the 9th of December 2013, all Indian businesses with more than 10 employees are required to comply with the Sexual Harassment of Women in the Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

The importance of this rule has been emphasized; companies with more than 10 workers are required to comply with it. Internal Complaints Committees for these types of businesses must be chaired by women as per the legislation. The company must also provide training for its personnel on the law's requirements (Sources from Centre for Experiential Learning. ⁹**Apparel Export Promotion Council v. A.K Chopra** With the exception of criminal statutes, no prior legislation dealt specifically with harassment of women prior to the implementation of this new

⁷ Independent Thought vs. Union of India and Anr

⁸ Seema Lepcha vs State of Sikkim and Others

⁹ Apparel Export Promotion Council v. A.K Chopra

act. However, Article 141 of India's constitution mandates that the Supreme Court's directions in *Vis haka Vs. State of Rajasthan* be given the force of law.

V. CONSTITUTIONAL REMEDIES AND INTERNATIONAL CONVENTION ON PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKING PLACES

The Constitution of India stipulates that all citizens will be treated fairly by the law (Article 14) and that all citizens would realize the "worth of status and opportunity" (Preamble). Since this is the case, women would always choose to work in a safe and equitable environment if given the chance. Standards of decency and equal opportunity are held holy in the Indian Constitution (Articles 14, 15, and 21). The rights to equality before the law, freedom from all forms of discrimination, and the safety and autonomy of the person are all guaranteed to every citizen by these provisions. Working people's dignity, health, and financial stability are all at risk.

If they are forced to "perform any activity" or "to play out any vocation, trade, or business" in violation of article 19 (1) (g) of the Constitution. "This is further supported by the fact that India has ratified CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly in 1979. It is a shorthand for advocating for women's rights generally, which may encompass everything from economic and political equality to social and legal protections." The Sexual Harassment of Women at Workplace Prevention, Prohibition, and Redressal Act, 2013 (SHE Protection Act) in India has been accompanied by a guide released by the Indian government's Department for Women and Child Development.

(A) The Criminal Law Amendment Act of 2013

In 2013, there were major changes in how the Criminal Justice System in India dealt with cases of sexual harassment. Legislation passed on April 3, 2013, called the Criminal Law Amendment Act of 2013. To define sexual harassment, the IPC included Section 354A. In addition, the word "sexual harassment" and associated crimes are defined and penalties are set down in the Indian Penal Code, 1860: Sexual harassment, as defined under Section 354A, is defined as any unwanted physical contact or approaches, including overt sexual advances, a demand or request for sexual favors, the presentation of pornographic material without the consent of the subject, or offensive sexual comments.

Penalties include a possible fine and jail time of up to three years. Sec 354B: Sentences for inciting a woman to undress range from three to seven years in jail and a fine. Sec 354C: Unauthorized access to a woman's private photos (voyeurism). There will be repercussions for

a first conviction, including a fine and a possible jail sentence of one to three years. Extra conviction: fine and jail time ranging from 3-7 years. Before Criminal Law Amendment Act 2013, IPC Section 509: deals with any” statement, action, or inaction meant to offend a woman's modesty, and sets forth that “whoever intending to insult the modesty of any woman expresses any word, makes any sound or gesture, or shows any object intending that such word or sound shall be heard

That such sign or object shall be seen by such woman, or interrupts upon the privacy of such woman, shall be punished with simple imprisonment for a term which may prolong to one year, or with fine, or both”. Anyone who distributes "foul representation of women" in the form of books, images, pictures, films, booklets, bundles, etc. penalized by a minimum jail term of two years under the Indecent Representation of Women (Prohibition) Act of 1987. Companies that have aired pornographic content or participated in any "foul representation of women" in the area face a minimum 2-year term for breaching Section 7 (Harassment by Companies). The Supreme Court's Adoption of Precautionary Principles to Address Sexual Harassment of Women in the Workplace (Vis haka Case)

Employers’ responsibility: Every company, regardless of bias, should implement measures to combat sexual harassment. Inform, broadcast, and disseminate that sexual harassment of any kind is not tolerated in the workplace. Public entities should include provisions in their rules and regulations to prevent and punish sexual harassment. The Industrial Employment (Standing Orders) Act, 1940 should be expanded to include private companies' efforts to combat sexual harassment in the workplace. A non-hostile workplace would prioritize employee rest, good nutrition, and clean facilities. There should be no workplace discrimination against women. It is the responsibility of the employer to raise employee knowledge of sexual harassment: Naturally, you should educate the rules.

(B) Criminal Proceedings and Corrective Actions

The complaint under the IPC or other legislation filed by the employer is the first step in taking necessary action. The complainant's employer must ensure the safety of the complainants and any witnesses, regardless of the nature of the complaint's resolution. The victim should have the option of requesting the offender's transfer or arranging their own. Under the terms of service, the company must take the necessary disciplinary action. Complaint Mechanism. If victims are to be compensated, a complaints procedure must be put in place. There has to be verification of time-limited therapy.

There has to be a system in place for filing complaints. Committee for complaints, guidance, or

assistance organization. The confidentiality must be preserved. Equal representation of women and men on the committee is essential. The complaints committee need to include a third party, such as an NGO or other entity familiar with the sexual harassment situation, to avoid the unnecessary weight of influence. None of the petitioners or witnesses should be treated unfairly. The complaint committee is required to provide an annual report detailing the previous year's "grievances and appropriate action taken on them" to the concerned Government Department.

“Post Vishaka Judgement on Apparel Export Promotion Council v/s A.K Chopra”

The Vishaka judgment has opened up a dialogue about sexual harassment on a national scale and exposed issues that had been dormant for a long time in places where no one would normally look. Next, the Supreme Court looked in *Outfit Export Promotion Council v. A.K. Chopra*, the most significant case in this field after Vishaka. The Supreme Court upheld the applicant's chance after he was found guilty of harassing a female coworker with physical force but used the Vishaka Judgment in his defense. The Apparel Export Promotion Council is situated in Delhi.

The Supreme Court's ruling in this case broadened the scope of what constitutes foul lead by rejecting the argument that direct physical contact is required for it to be considered such. The Supreme Court has established that sexual harassment occurs when a female employee is exposed to uninvited amorous gestures, solicitations for sexual presents, or other verbal or actual lead with sexual repercussions, whether direct or implied. This is particularly true if the female worker's acceptance or rejection of such attempts might be used against her in the workplace. This discovery was made.

VI. STATISTICS ON HARASSMENT OF WOMEN AT WORKPLACE AND ME-TOO MOVEMENT

A greater focus on women's rights has resulted from the 2012 Nirbhaya assault case and subsequent legislation and preventative measures. However, a 2017 research by the Indian Bar Association found that around 70% of women still do not report instances of inappropriate conduct by their employers or other male coworkers. To add insult to injury, While the Sexual Harassment Act of 2013 mandates that all private and public relationships with at least ten workers establish an internal protest board (IGC), a new report by the Federation of Indian Chambers of Commerce and Industry (FICCI) found that as many as 36% of Indian associations and 25% of worldwide associations required such a board.

Even more disheartening, the research showed that some companies nevertheless maintain an

internal complaint panel (IGC) despite its members' lack of adequate training and even resistance to dealing with such issues. In addition, a 2015 research by Ernst & Young found that half of the advertising and media organizations and forty percent of the IT companies surveyed were unaware that the establishment of an IGC was required by law. "The number of reported incidents of sexual harassment in Indian workplaces increased from 371 in 2014 to 570 in 2017," a rise of 54%. On July 27, 2018 and December 15, 2017, official sources presented in the Lok Sabha (lower house of parliament) revealed a total of 2,535 such incidents had been documented in the four years prior to July 27, 2018. This amounts to almost two instances being recorded every single day.

Across the nation, 533 incidents of sexual harassment were recorded in the seven months ending July 27, 2018. There has been a MeToo movement in India for some time now. Several women have now taken to social media to share their own experiences with harassment and name and shame their accused harassers because of this. Other well-known people from the film, television, media, advertising, music, and entertainment sectors have also been accused of harassing women. One other source reveals that section 509 of the Criminal Law is where the NCRB files cases of "insult to the modesty of women" (IPC). It is considered harassment in the workplace. In 2016, the National Crime Records Bureau reported 665 such incidents, which is down 20% from 2015's 833 incidents but up 26% from 2014's 526 incidents. Insulting a woman is a crime, whether it be by words, sounds, gestures, or deeds.

VII. CONCLUSION

With this paper, we want to shed light on the complexity of the harassment issue in the workplace and catalog the legal tools and preventative measures already in place to put a stop to it in public and private sector institutions alike. Due to the nature of the offense, sexual harassment among working women had not come to light until only recently. Thus, they were dubbed "Noiseless crime" and "Dark figures of crime." These statistics highlighted the perilous situation in which women find themselves while on the job. Any human being, whether they reside in a developed country or one yet on the path to prosperity, has the right to live a life devoid of mental or physical torture or harsh treatment. The offenders of such unwanted sexual approaches should be punished monetarily.

As a consequence, the Sexual Harassment of Women at Workplaces (Prevention, Prohibition, and Redressal) Act of 2013 was enacted. Because of this rule, appropriate actions have been made to combat obscene conduct of women in the workplace, both in formal (government and public) and informal (coordinated) contexts (confidential areas). Every industry should

establish a complaints committee following the guidelines laid forth in this legislation. In addition, this research has provided suggestions on how the government and non-governmental organizations (NGOs) might improve their surveillance of sexual harassment in both the public and private sectors, focusing specifically on the experiences of women in both public and private workplaces.

As a result, working women will feel more empowered to speak out and demand justice. Knowing about these "Dark" figures of harassment among them is essential. "Legal protections like those are essential to reducing the prevalence of this form of harassment against women. The Sexual Harassment of Women in the Workplace (Prevention, Prohibition, and Redressal) Act of 2013" requires that the government and non-profit organizations, with the help of the media, academics, and concerned partners, lead efforts to bring issues to the forefront of Supreme Court rules and legitimate checking obligations. Guidelines announcements and brochures should be posted in all public areas, including government agencies such train stations, bus terminals, private/government hospitals, university bulletin boards, and private businesses.

The Supreme Court's recommendations and the Harassment Act of 2013 should be publicized via a media education campaign that should air on television and radio. Additionally, the government should incentivize the dissemination of these reports through social media. All employees, regardless of gender, should have access to the proper counseling. As is the case in many developed countries, female workers should be given training on how to respond to sexual harassment on the job, how to make announcements, and how to report incidents to the appropriate authorities within their organization and the police. Planning programs for mindfulness creation and checking responsibilities should remember training for policing legal specialists on how to report complaints of lewd behavior in a way that does not further harm the person in question.

a comprehensive legitimate mindfulness seminar on these issues; and the development of orientation refinement to prevent further exploitation due to the law enforcement framework. There are currently established rules and other safety estimations that may be used to halt unwanted behaviors. High Court regulations and checking culpability are important to investigate in both public and private sectors, and this is just the second time this information has been widely disseminated. We advise keeping secret both the severity of the penalty and the speed with which it may be appealed. Victim help entails the provision of necessary services, such as social, medical, material, psychological, financial, and legal support, to persons who have been victims, in this case women.

VIII. REFERENCES

1. Chaitanya Mallapur & Anmol Alphonsa (2018), Me Too India: 54% Rise In Sexual Harassment Reported At Workplaces Between 2014-17, Retrieved from <https://www.indiaspend.com/metooindia-54-rise-in-sexual-harassment-reported-at-workplaces-between-2014-17>
2. Crime in India Statistics (2016) Published by National Crime records Bureau, Ministry of Home Affairs, New Delhi.
3. Gupta, S S & Hajra A. (2007), A Handbook of Prevention of Sexual harassment at Workplace. In Rufus & Beulah (2010), Sexual Harassment of Women at Workplace, Indian Police Journal, Vol: LVII, No:4, pp.21-23 .
4. Hand Book on Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013, (2015), Ministry of Women & Child Development, Govt of India
5. Mackinnon C. (1978). Sexual harassment of working women. In Rufus & Beulah (2010), Sexual Harassment of Women at Workplace, Indian Police Journal, Vol: LVII, No:4, pp.21-22 .
6. Nishith Desai Associates (2018), Legal and Tax counselling Worldwide, India's law on Prevention on Sexual Harassment at the Workplace, retrieved from <http://www.nishithdesai.com>
7. Prevention of Sexual Harassment (POSH) at Workplace (2018), Centre for Experiential Learning retrieved from <https://elitelcel.com/>
8. Rufus D & Beulah S (2010), Sexual Harassment of Women at Workplace, Indian Police Journal, Vol: LVII, No:4, pp.21-23.
9. Rufus, D. & Beulah, S., "Prevalence of Sexual Harassment at Workplace Among Women Workers in Retail Shops: A Study in Tirunelveli", published by Kanniyakumari Academy of Arts and Sciences (KAAS) (December 2006) Proceedings. Political Science, pp. 13-19.
10. Sambad (Oriya) daily dated 29th November 1995. Quoted from In Tripathy, Prabhat Chandra (1998) Crime against working women, APH Publishing Corporation: New Delhi, p. 233.
11. Sexual Harassment of Women At Workplace (Prevention, Prohibition and

- Redressal) Act(the SH Act),2013, Sources from Website on Ministry of Women and Child Development, Government of India
12. Sheethal (2018), Protection of Women from Sexual Harassment at Workplace in India, retrieved from <http://www.legalserviceindia.com>
 13. Sikri, Rehana (1999). Women and sexual exploitation - Harassment at work, Kanishha Publishers, New Delhi, p. 39.
 14. YasmineHossain (2017), Workplace Harassment problems of Women in Indian and how to deal with them. Retrieved from website on <http://www.careerizma.com/blog/workplace-harassment-problems-women-india/>
