

# **SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IS IT STILL PREVALENT?**

*by*

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## **ABSTRACT**

This paper focuses on whether sexual harassment of women at workplace is still in line. This paper discusses on how the women are being treated by the society and their family members. However modern our generation may be yet the mindset of the male workers have not been changed and there is still gender discrimination. This paper also covers the steps taken by the government and the laws which are present for safeguarding women from sexual harassment they are undergoing.

## **INTRODUCTION: -**

Sexual harassment at workplace is a very common and widespread problem in the world, whether it is developed or developing nation women are being sexually abused by the employers or co - workers. It is an universal problem that is present for both men and women and it happens more commonly to women gender.

Sexual harassment not only hampers the physical growth of the women but also the mental and emotional well - being. To protect the women from being sexually abused the MWCD has enacted Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act) which was formed by the apex court under the judgment Vishaka & Ors v. State of Rajasthan and Convention on Elimination of all Forms of Discriminations Against Women was also formed.

## **PROVISIONS FOR PROTECTION OF SEXUALLY ABUSED IN INDIAN LAW:-**

### **Constitutional Law:-**

Preamble of our Constitution has guaranteed equality of status and of opportunity.

**Article 14** – Equality of a person under law is being guaranteed.

**Article 15(1)** – It restricts discrimination on the ground of religion, race, caste, sex, place of birth or any of them.

**Article 15(3)** – It provides that state shall make special laws for the protection of women and children and there can be no bar regarding it.

**Article 16** – It provides equality of opportunity in employment or appointment to any office under the State. It prohibits discrimination under the matters of employment.

**Article 19(1)(g)** – It provides freedom to practice any profession and carry out any trade or business.

**Article 21** – It provides right to life and personal liberty.

**Article 42** – It makes provisions for just and humane conditions of work and maternity relief.

### **Indian Penal Code:-**

#### **Section 354A – Sexual Harassment and its punishment:-**

Sexual Harassment is

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

### **Section 354B - Assault or use of criminal force to woman with intent to disrobe**

Any man who assaults or uses force to any woman or abets such act with the intention of disrobing or compelling her to be naked shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

### **Section 354C – Voyeurism**

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

### **Section 354 D - Stalking**

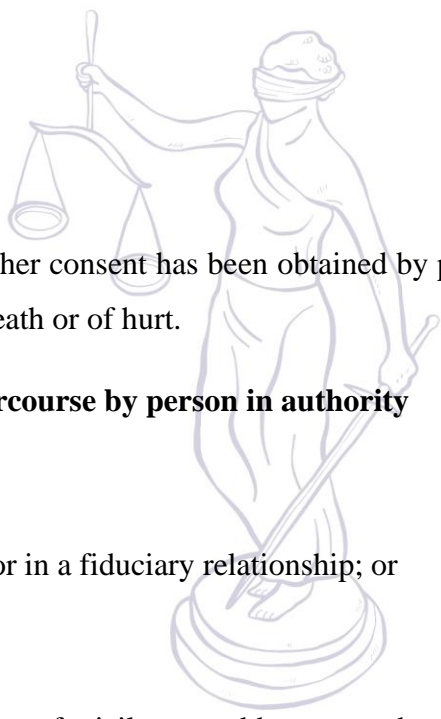
Any man who -

- i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking.

Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

### **Section 375 – Rape**

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

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- i) Against her will.
  - ii) Without her consent.
  - iii) With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

### **Section 376C - Sexual intercourse by person in authority**

Whoever, being -

- i) in a position of authority or in a fiduciary relationship; or
  - ii) a public servant; or
  - iii) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or
- on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 5 years, but which may extend to ten years, and shall also be liable to fine.

### **Section 509 - Word, gesture or act intended to insult the modesty of a woman.**

Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

### **ILO ON SEXUAL HARASSMENT:-**

The International Labour Organisation defines “sexual harassment” as a sexual behaviour that is unwelcome and offensive to the recipient. It also says that to constitute sexual harassment these two conditions must be present.

The ILO also describes two forms of “sexual harassment”:

- i) Quid Pro Quo: Literally translates to ‘this for that’. In this scenario, the victim is offered any work-related advantage in exchange of sexual favours. For example, promotion, raise in pay, continuation of employment, etc.
- ii) Hostile work environment: In this scenario, the employee is subjected to sexual remarks, unwelcomed sexual behaviour or conduct. In these situations, the person in charge neither takes it into account nor discourage such unjustified, unlawful behaviour. Such conditions make the environment hostile for women.<sup>1</sup>

The UN CEDAW in its General Recommendation No. 19 said that “sexual harassment” is a gender-based violence. It is gender-based because it is directed against women.

### **POSITION OF WOMEN IN INDIA:-**

Dated back to the Vedic period, women have been worshipped as goddess, as goddess of wealth, learning and power. But the reality of Epic period has been a little different. Women were married off at an age where they didn’t even have an idea of what nuptial was and was totally immature. They were not allowed or encouraged to receive education. Birth of a female into a family was unwelcomed. A son was cherished more than a daughter, as daughter was

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<sup>1</sup> [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms\\_738115.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_738115.pdf)

considered to be a liability. Widows were forced to die at their husband's cremation which was known as the practice of sati.

Modern India witnessed many reforms in society which proved to be beneficial for upliftment of women as well. Purdah system was discontinued by Begum of Bhopal. Practice of sati was also eradicated by the social reformer. Widows were allowed to remarry too.

But women in contemporary India, although capable of climbing the ladder of success but is still not encouraged by her family. Even she has all the fundamental rights as granted by the Constitution but yet she is not treated equally by her male colleagues. Families of rural India still believe in dowry and are driven by the desire to marry off their daughters early so that they can be relieved off the burden. The woman of even today is still dealing with dowry deaths, female foeticide, sexual harassment, infanticide etc. Metropolitan cities are considered to be highly unsafe for a female. The unfortunate Nirbhaya gang rape case was the highlight of 2013 which brought in many amendments in our criminal law. It is sad to say that something infelicitous had to happen to strengthen the laws which protect the females of the nation. The recent case of IAS Rani Nagar's resignation due to sexual harassment at workplace also cites the example of how women are still oppressed in our society even being at such a high rank.

### **VISHAKHA JUDGMENT:-**

Sexual harassment a societal issue, has been prevalent in our society since ages, be it in the form of gender discrimination. Sexual harassment at workplace in India was reckoned by the Supreme Court in the case of Vishakha vs. State of Rajasthan. The Apex Court acknowledged that there was need of urgency in laying down guidelines to fill the vacuum of legislative inadequacy and provide remedy for "sexual harassment" at workplace which is an infringement of the fundamental right. The Supreme Court also alluded to various provisions of the Constitution which visualised judicial intrusion necessary for destruction of this social crime. It referred to Articles 15, 42, 51, 51A. Placing reliance in the international convention UN CEDAW which was signed and ratified by the Indian government, the Vishakha Guidelines were formed and had the effect of law

The norms laid down by the Supreme Court were mandatory for both government and private institutions and are as follows:

- i) It shall be the obligation of the employer and other head of institution to prevent the commission of acts of “sexual harassment” and provide the process for resolution, settlement or prosecution of such acts and take all the steps required.
- ii) All persons or employers in charge of workplace should take appropriate preventive steps.
- iii) Where such conduct of a person implies an offence under the IPC, 1860 or under any other law, the employer shall take steps and make complaint to the apt authority. The victims and witnesses shall not be victimized.
- iv) Where such conduct of a person amounts to misconduct in the employment as mentioned under the service rule, the employer shall initiate an apt disciplinary action according to the rules.
- v) There shall be establishment of appropriate complaint mechanism in the employer’s company so as to redress the complaints of the victim. There should be assurance of time bound treatment by such mechanisms.
- vi) Such complaint mechanisms shall provide for a Complaints Committee, a special counsellor who shall maintain the confidentiality. Such committee shall have women on board as members, such shall be half in number at least. There shall be involvement of third party like NGOs which have sufficient knowledge and awareness about “sexual harassment”. The complaints which are redressed shall be cited in the annual report which will be submitted to the appropriate government authority concerned.
- vii) Employees should be allowed to raise problems and questions regarding “sexual harassment” at appropriate forum and such questions shall be deliberated in the Employer-Employee meetings.
- viii) Female employees shall be made aware of their rights in this regard by notifying the guidelines.

ix) Where “sexual harassment” is a result of the act or omission by any third party, the employer or person in charge shall be responsible for taking all the necessary steps and shall extend support to the victim.

x) The government shall consider taking all the necessary steps to ensure that all the guidelines mentioned herein are taken into account by private sector organisation.

Guidelines mentioned herein shall not prejudice any rights mentioned under the “Protection of Human Rights Act, 1993”. The guidelines laid are a step towards establishing gender fairness for working women and thus the petition was disposed of.<sup>2</sup>

#### **POST VISHAKHA JUDGEMENT:-**

After the Vishakha Judgement, several judgments have been passed that stresses on the requirement for a far-reaching law on sexual harassment at workplace.

#### **Apparel Export Promotion Council vs. A K Chopra:- AIR 1999 SC 625**

The Supreme Court restated the law that was dictated in the Vishakha Judgement and endorsed the firing of the superior officer of the Apparel Council. It also ruled that physical exchange was not necessary to amount the act as one of “sexual harassment”. It also highlighted that “sexual harassment” is a form of gender-based discrimination.<sup>3</sup>

#### **Medha Kotwal Lele & Ors. vs. Union of India & Ors.:- (2013) 1 SCC 311**

Hon’ble Supreme Court took cognizance on the letter submitted by Dr. Medha and converted it into a writ petition. The Court checked the implementation of the Vishakha Guidelines across the nation by directing State Governments to file affidavits which tells about the steps the government is taking to implement the Vishakha Guidelines. Not being content how the Guidelines were implemented, the Court asked the States to put in place suitable mechanism which can ensure such implementation successfully. The Supreme Court affirmed that if there

<sup>2</sup> <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>

<sup>3</sup> <https://indiankanoon.org/doc/856194/>



was non-compliance and non-adherence from the guidelines, it would be open to the aggrieved citizen to move to the High Courts of the respective states.<sup>4</sup>

### **GOVERNMENTAL MEASURES:-**

In 2017, the Ministry of Women and Child Development (MWCD) launched an online complaint portal called Sexual Harassment electronic-Box (She-Box) for registering complaints related to sexual harassment. This system ensures effective implementation of PoSH Act. For speedier remedy, the registered complaints straight away goes to central and state authorities having jurisdiction to act. With the assistance of this portal, the ministry can also monitor the complaints.

MWCD has also published a handbook on the PoSH Act, 2013 in order to provide and easy knowledge of the Act. It also organises capacity building programs like training, workshops, etc. on PoSH Act.

Owing to the #MeToo Movement of 2018, a Government of Ministers (GoM) was constituted by the government which is led by the Home Minister with Finance Minister, Human Resource Development Minister and Women & Child Development Minister on board as members. It was first constituted in 2018 and again reconstituted in 2019 after NDA government again came into power. This group was set up to examine the sexual harassment situation in the country and provide valuable recommendations to strengthen the framework of anti-harassment law.

An important recommendation submitted by the NCW to GoM was to increase the imprisonment from 1 year to 3 years, with or without fine. It also recommended to GoM that the step of conciliation must be let go as it creates a sense of pressure and awkwardness on the victim to withdraw the complaint. It tends to worsen the situation.

GoM recommended that rape shall not be limited to penetration of vagina, mouth or anus only. It also recommended that any non-penetrative form sexual contact should be determined as

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<sup>4</sup> <https://indiankanoon.org/doc/48293767/>

sexual assault. Establishment of Employment Tribunal instead of ICC was also advised. With top ministries being on board, this situation will certainly receive the deliberation it deserves.<sup>5</sup>

## **INTERNATIONAL LAWS ADDRESSING SEXUAL HARASSMENT AT WORKPLACE:-**

### **Convention on Elimination of all Forms of Discriminations against Women (CEDAW) –**

It guides the State members to take fitting measures to remove forms of discriminations against the women in all arena of employment (Article 11). In its General Recommendation Number 19 UN Committee further made it clear that sexual harassment at workplace can prejudice 'equality in employment' for women if they continue being subjected to it.<sup>6</sup>

### **Beijing Platform for Action:-**

Under Strategic objective 'Eliminate occupational segregation and all forms of employment discrimination', in para 178 reckons "sexual harassment" as a form of violence and discrimination against women and urges various authorities (government, employers, employees, trade union and women's organisations) to ratify and apply laws which promotes the development of workplace police in order to eliminate "sexual harassment" and "gender discrimination" and development of preventive strategies.<sup>7</sup>

### **ILO Committee of Experts on the Application of Conventions and Recommendations:-**

It has affirmed that sexual harassment is a form of sexual discrimination. The ILO's Indigenous and Tribal Peoples Convention (No. 169) also specifically prohibits sexual harassment in the workplace.<sup>8</sup>

### **International Covenant on Economic, Social and Cultural Rights:-**

Under Article 7 it recognises that women have a 'right to work' in fair conditions and must not be put to "sexual harassment" at workplace.<sup>9</sup>

<sup>5</sup> <https://www.indiatoday.in/education-today/gk-current-affairs/story/group-of-ministers-gom-rajnath-singh-sexual-abuse-1375146-2018-10-25>

<sup>6</sup> <https://www.un.org/womenwatch/daw/cedaw/>

<sup>7</sup> <https://beijing20.unwomen.org/en/about>

<sup>8</sup> <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>

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

It became an extreme requirement to enact a legislation which exclusively dealt with SHW at workplace and provided for a redressal mechanism. The Bill for the same proposed by the Parliament received Presidential assent on 22nd April, 2013 and came into effect from 9th December 2013.

The Act extends to whole of India. It outlines an aggrieved woman as a woman, of any age, whether she is employed or not, alleges that she has been subjected to any act of sexual harassment by the respondent.<sup>10</sup>

Under this Act an employee is a person employed at workplace for regular, temporary, ad hoc work or on a daily wage, whether employed directly or through an agent, with or without the knowledge of the principal employer, whether or not for remuneration, working voluntarily or otherwise. It benefits domestic workers also.<sup>11</sup>

An important question arises ‘whether this Act applies to educational institutions?’ remained unanswered.

PoSH Act discusses about constitution of Complaints Committees, Internal Committee (IC)[49] and Local Committee (LC)[50]. The IC can be established in organisations which have more than 10 employees. Complaints of organisations having less than 10 employees are directed to the LC.

On the other hand, the IC have been bestowed with same powers as that of the Civil Court for the purpose of conducting inquiry. A domestic committee with no member from legal background being vested with such power is colourable legislation. It should be made a stern requirement to at least have on member which bears legal knowledge.<sup>12</sup>

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<sup>9</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>10</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 S. 2(a) No. 14, Acts of Parliament, 2013 (India)

<sup>11</sup> Ibid at S. 2(f)

<sup>12</sup> Ibid S.11

The provision of submitting a written complaint to the Committees seems to be one with limitation. It may not be possible in every case that the distressed woman is literate enough to file a complaint. Such provision should be amended to path a way for filing complaint in oral to concerned authority.<sup>13</sup>

### **#MeToo MOVEMENT:-**

Almost 14 years ago, #MeToo campaign was started by activist Tarana Burke. Her motive was to spread the message that the survivors are ‘heard’ and ‘understood’. This online campaign was driven by the aim to empower women but that didn’t seem to be the case. Victimized women are often seen as a subject of sympathy.

#MeToo gained its popularity in the years 2017 when a Hollywood actress Alyssa Milano opened up about her experiences involving sexual harassment by Harvey Weinstein. The fact that many posts on social media pops up daily just reminds us of the fact that how widespread effect and awareness this Movement has created.

In India, the onset of #MeToo Movement can be traced back to October 2018 with the accusation of sexual harassment charged by actress Tanushree Dutta on Nana Patekar while shooting their film ‘Horn Ok Please’ in 2008. It was followed by a series of stories shared by various women on social media from diverse professional background. Many known celebrities, producers, politicians like Alok Nath, Sajid Khan, Vikas Bahl, M.J. Akbar and Former CJI Ranjan Gogoi were swept under the paradigm of #MeToo.

Many have supported #MeToo but there was indefinite criticism too. A positive outcome of his Movement is that discussing and making people aware of “sexual harassment” is not a taboo anymore. It has become supportive and comforting to see other victims coming out and sharing their stories. It helps the unreported cases get noticed.

Men have also started policing themselves of how they act around their female colleagues or friends. Since this outbreak of this Movement, private companies have involved themselves in allotting a specific budget to train their HRs and organise workshops for their employees. They are also formulating stricter SHW at workplace policies. Such training programs and workshops

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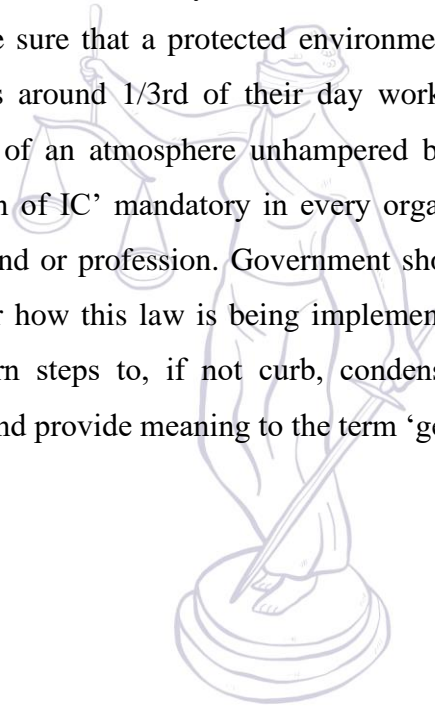
<sup>13</sup> Ibid S. 9

has resulted in men realising that their behaviour was actually toxic around females, which needed to change.

It is believed that this Movement did nothing for people who belong to a vulnerable background. It was a movement “by the privileged, of the privileged and for the privileged”.<sup>14</sup>

## CONCLUSION

Sexual harassment at workspace is a global issue. It is deep rooted within the Indian society and is still prevalent in the society. It needs to be eradicated as it acts like a disease. Government needs to make sure that a protected environment is provided to both women and men. An individual spends around 1/3rd of their day working at their jobs they need to be assured by their employer of an atmosphere unhampered by sexual harassment. Government shall make the ‘constitution of IC’ mandatory in every organisation with at least one-member fitting from legal background or profession. Government should not only make changes in the legislation but also monitor how this law is being implemented at the primary level. It is time that government takes stern steps to, if not curb, condense the figure of cases of “sexual harassment” at workplace and provide meaning to the term ‘gender equality’.



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<sup>14</sup> <https://online.maryville.edu/blog/understanding-the-me-too-movement-a-sexual-harassment-awareness-guide/>