

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: AN ANALYTICAL STUDY WITH REFERENCE TO INDIA

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ABSTRACT

Sexual Harassment at workplace is not only an evil against women but also an unconstitutional act against the females. It leads to the way of violence, torture and harassment. An effort has been made to emphasis on the significance and relevance of the Act made for the protection of women at their respective workplaces. This Act plays a major role in proactively ensuring the protection of all women who are working. This paper also analyse the role and responsibility of judiciary in playing the major role in the actual implementation of the concerned law.

KEYWORDS: *Way of Violence, Torture and Harassment, Financial Liberation*

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INTRODUCTION

Sexual Harassment at workplace is a breach of all the prominent rights of a woman like right to equality and freedom. It promotes an unpredictable and intimidating work environment, discouraging women from initiating and undermining their financial liberation and their aim of comprehensive development¹. “Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013” was created with this concept to be fulfilled.²

The Honourable Supreme Court recognised the necessity of such legislation initially in **Vishaka v State of Rajasthan**³. In the absenteeism of any kind of legislation at the time offering actions to tackle the wicked of the sexual harassment of women at work place, the Hon’ble Supreme Court, in exercising its power under “Article 32 of the Constitution,” issued strategies to be trailed at workplaces and organizations.⁴ The Supreme Court combined fundamental human rights principles contained in the Constitution of India under “Articles 14, 15, 19(1)(g), and 21,” besides requirements of the “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),” which the Government of India signed in 1993. The Supreme Court’s suggestions were regarded as the law proclaimed under Article 141 of the Indian Constitution.

¹Sahu, A. (2018). Combatting Sexual Harassment of Women at Workplace. *International Journal of Trend in Scientific Research and Development, Volume-2*(Issue-3), 2239–2242. <https://doi.org/10.31142/ijtsrd12745>

²Rostamzadeh, E., & Mehregan, R. T. (2016). Perspective on Sexual Harassment of Women in Workplace. *Mediterranean Journal of Social Sciences*. <https://doi.org/10.5901/mjss.2016.v7n2p69>

³<https://indiankanoon.org/doc/1031794/>

⁴McDonald, P. (2011). Workplace Sexual Harassment 30 Years on: A Review of the Literature. *International Journal of Management Reviews, 14*(1), 1–17. <https://doi.org/10.1111/j.1468-2370.2011.00300.x>

CONCEPT OF SEXUAL HARASSMENT

Sexual harassment is the most heinous and grievous issues that women face presently in a variety of settings. It is a developing problem, and everyone is doing their best to address it by implementing new laws and procedures. The concept of sexual harassment varies from individual to individual and as well as from jurisdiction to jurisdiction. The crime of sexual harassment is not about the physical attraction but it is about the using of your powers in inappropriate ways. Actually, generally the incidents of sexual harassment takes place in those jobs which are meant to be a masculine work to do like of police officers and any other authorised post. The male tries to dominate those females who work under him to prove his domination which leads to this undue torture of female employees or sub-ordinates.

It is generally seen that victims of sexual harassment in their working area are frightened to file their complaints to higher authorities which gives boost to the harassers as they remain untouched. There are so many reasons behind this kind of behaviour of victims as they fear of losing their jobs, their reputation in society and the family pressure too. Some women paucities information: they are uninformed of what establishes sexual harassment and consequently fail to inform it. Every nation trade with this problem on a regular basis. No female worker feels assured, and they dearth a feeling of security. Many nations' laws have altered in recent years to safeguard women personnel from sexual provocation⁵.

Factors Amounting to Sexual Harassment

The POSH Act follows the "Vishaka" judgement. Referring to the POSH Act, sexual harassment comprises unwanted sexual misbehaviour, whether verbal or indirect, such as physical interaction and approaches, request, or assembling sexually coloured comments, displaying pornography, or any other unsolicited physical, verbal, or nonverbal sexual behaviour. The following circumstances, among others, may represent sexual harassment if they happen or are present in connection to or linked with any act or actions of sexual harassment:

- Any privileged treatment to be given in the workplace.
- Threat of retaliation in the workplace.
- Threat to one's professional position in the workplace.
- Impeding with work or creating an menacing, offensive, or hostile work situation; or embarrassing treatment that may jeopardise the health or wellbeing of the woman employee (Jiyoun Jeoung, 2018).

The POSH Act's definition of "sexual harassment" is broad sufficient to include both direct and implicit sexual conduct, including physical, verbal, and even written conduct. The fact that the conduct is undesired and unwelcome by the receiver is the major differentiating characteristic. It involves a kind of sexual extortion (which roughly translates as "this for that" in English). In a typical case of quid pro quo harassment, a powerful person presses a female employee (typically a junior) for sexual advances in return for employment or the threat of workplace. In addition, creating an "intimidating, offensive, or hostile working environment" is included in the definition. An example might be a workplace where a woman employee is subjected to unwelcome remarks about her body type, causing her to feel humiliated and incompetent to work effectively⁶.

⁵Banoo, S. (2020). The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013-Legislative Commentary. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3697540>

⁶Walmikkachru, S. (2019). Gender inequality & workplace harassment of women in India. Arts & Humanities Open Access Journal, 3(6). <https://doi.org/10.15406/ahoaj.2019.03.00140>

While certain types of sexual harassment, such as sexual attack, are obviously violent and heinous, and may only need to happen once to be classified as such, others may be difficult to identify. Due to the lack of a fine line test for establishing what constitutes a "hostile working atmosphere," the internal committee will be responsible for determining whether the persecution experienced by a fatality is serious enough to have resulted in a hostile working environment. Furthermore, deciding what signifies "sexual harassment" is contingent on the circumstances and perspective in which the conduct occurred⁷.

EFFECT OF SEXUAL HARASSMENT ON VICTIMS AND THE ORGANISATION

In almost all instances, the impact of improper behaviour on a person is very severe. It affects a person's capacity to work, causes anxiety, discontent, anger, and a variety of other pressure-related feelings, and a person lives in a constant state of pressure.⁸ The unlucky victim also feels humiliated, guilty (transgression), pressured, agitated, or discouraged, and they lose faith in their co-representatives. They need to stay away from work for the most part. They also suffer from the negative consequences of pressure's bodily side effects. Their social interactions also get effected because of their physical health deterioration as they suffer from bad medical conditions. Irregular behaviour disorder is wreaking havoc on an increasing number of unlucky victims⁹. Many people believe that the effect of obscene behaviour is limited to the person, however this is not true. It has a significant impact on the organisation. The whole environment of the workplace becomes unpleasant and unsuitable for working relationships, and the collaborators and partners are also adversely affected. It leads to reduced profitability, lower efficacy, and a loss of trust in the workplace.

Basic Causes

The GOI and the National Commission for Women drew up draught Bills on sexual harassment at workplace and placed them in the public for discussion and feedback following Vishakha's instruction and subsequent opposition to them. In December 2013, sixteen years of supported efforts by the women's development resulted in the creation and need of a legislation. The Supreme Court Vishakha categories with relation to sexual harassment at workplace are codified in the 2013 Act. It believes that every woman has the right to be treated with respect at work, and that sexual harassment is a violation of one of those rights¹⁰.

One might argue that the Vishakha decision was the consequence of women's active approaches to human rights, which linked women's and human rights. The Vishakha judgement, according to Sahu, represents a quantum leap forward for sexual orientation equality and the development of Indian law on international law. It forced the Indian government to acknowledge the problem as a form of violence against ladies. The judgement saw the use of international law to broaden the scope of already-established guarantees, as well as to fill in the gaps where they

⁷Dr. Paramita Dey, Dr. P. D. (2013). Sexual Harassment At Workplace – An Empirical Study To Understand Through The Lenses Of Working Women Of Guwahati, Assam, India. IOSR Journal of Humanities and Social Science, 8(6), 77–82. <https://doi.org/10.9790/0837-0867782>

⁸Bothra, N. (2014). The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2498990>

⁹Lee, J., & Oh, M. (2020). Combat Workplace Sexual Harassment by Third Parties? Reframing Institutional Measures and Cultural Transformation in South Korea. Violence against Women, 107780122096990. <https://doi.org/10.1177/1077801220969901>

¹⁰Bothra, N. (2014). The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2498990>

existed, with the aim of extending human rights. Vishakha was a fascinating case since it charted a new path. It was not intended only to deal with sexual harassment since it opened up new vistas in the area of international law, eventually becoming part of national law. Vishakha established a strong point of reference for the prompt application of international traditions in future instances via its comprehensive use of CEDAW. Vauquelin stated that Vishakha was an open intrigue lawsuit that arose from a woman specialist's personal experience and was aimed at including working ladies. The general interest request used her work as a tangible example of sexual rights breaches, and then utilised a pattern of abuse by presenting the stories of five other ladies who were sexually assaulted while working in general health or social services. The Vishakha decision was crucial in carving out a path that generated multiple stakes for various groups while remaining in the general population area. It was utilised that it was used in this way as part of different verdicts on problems of violation of human rights at work, resulting in a significant inheritance. The notion of balance, as defined by the judgement, included much more than treating everyone the same. It said that equality among individuals may be recognised in the true sense of the word by putting out focused efforts toward the correction of effectively existent force imbalanced qualities in the general public¹¹.

PREVENTIVE CAUSES AND SUGGESTIONS FOR THE SEXUAL HARASSMENT

Over the years, it has become more apparent that administrative actions aimed at combating lewd behaviour should be supplemented with environment-based countermeasures. It has long been recognised that preventative or remedial systems have a significant advantage over enactments that are primarily corrective. Governments, businesses/lanions, and non-governmental organisations (NGOs) all around the globe are increasingly enforcing workplace policies and grievance procedures to address lewd behaviour¹². Some of the effective suggestions to cope up the problem are:-

- Policy statements alone seem to be the most effective in avoiding forms of lewd behaviour, such as insulting remarks about women in general or the exhibition of sexually suggestive or graphic material that isn't directed at particular persons. With such a policy in place, it's usually a good idea to create a code of conduct for both managers and workers, detailing the procedures that each must follow in the event of sexual harassment (JiyounJeoung, 2018).
- The organization/foundation should specify arrangement proclamations clearly declaring that particular working environment as a "Zero Tolerance Zone," which implies that lewd behaviour will not be tolerated or ignored by the company under any circumstances.
- That approach's terminology should be clear, unambiguous, and unmistakable.
- To make it apparent what is and is not sexual harassment, the term "sexual badgering" must be defined and illustrated with examples.
- Any act of lewd behaviour at work should be explicitly stated in the policy statement as misbehaviour, for which the delinquent employee is liable to be penalised.

¹¹Chadha, A. (2018). Law Relating to Sexual Harassment of Women at the Workplace in India: A Critical Review. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3171264>

¹²Banoo, S. (2020). The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013- Legislative Commentary. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3697540>

- Victims of inappropriate behaviour should be required to report such incidents to their immediate administrator or chief of approach.
- It should state unequivocally that the employer and management are committed to dealing with any inappropriate behaviour in a private and sincere manner.
- An employer should find a method to prevent lewd behaviour by bringing it up, expressing strong disapproval, establishing suitable penalties, educating workers of their right to increase and how to raise the problem of sexual harassment, and emerging ways to educate all parties involved.

The rules following the Vishakha work recommend that organisations make an express restriction on inappropriate behaviour in the environment open in suitable ways, change direct assistance principles to include lewd behaviour as an offence, and increase familiarity with suitable disciplinary measures that will be taken against the guilty party, among other preventive measures. As many misconceptions surround this notion, lewd behaviour is a vastly under-reported phenomenon. It's not a declaration of desire; rather, it's a kind of persecution, as well as exploitation and terrorization, based on intense and authoritative relationships. Employers must establish up a grievance tribunal led by a woman, according to the regulations. The panel will consist of a third party from a non-administrative organisation or another person familiar with problems of lewd behaviour to ensure fairness¹³.

There should be a clear prohibition on inappropriate behaviour at work, and this prohibition should be communicated, disseminated, and taught in an acceptable manner so that employees are aware of their rights and responsibilities. In the event of an offence, the Organization should initiate proper disciplinary action. The National Commission on Women has suggested several legislations for the application of laws for the equivalent, but none of them have yet been enacted. There must be a substantive law for the equivalent along the way. A remunerated discipline must also be provided to the offending party¹⁴.

RECOMMENDATIONS

At many levels, including government, corporate, and individual levels, one may attempt to avoid this problem by addressing and without blaming anybody. At the organisational level, the employer may create a safe and harassment-free organisation environment by enacting policies and procedures. The feeling of security that this organisation policy provides may make it easier to work effectively and efficiently towards a successful result. To prevent problems, the organisation may provide sexual harassment training, seminars, and educational programmes. The organisation must demonstrate its devotion to this matter. Every matter must be taken critically and thoroughly examined as soon as possible. This will convey a message to all employees that the employer cares about women's rights and is working to bring a positive working environment. Surveillance techniques are a preventative strategy that involves the installation of CCTV cameras in the workplace¹⁵.

¹³McCarthy, C. (2018). Take steps to prevent, address sexual harassment in the workplace. *Campus Legal Advisor*, 18(8), 1–5. <https://doi.org/10.1002/cal.30758>

¹⁴Shaikh, A. (2020). Areas of Improvement in the Legislations of Sexual Harassment of Women at Workplace. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3556447>

¹⁵Vauqueline, P. (2019). Sexual Harassment of Women at Workplace in Assam: The Present Scenario. *Space and Culture, India*, 7(3), 1–13. <https://doi.org/10.20896/saci.v7i3.717>

Employers must conduct with employees on a regular basis to know about their problems. As a result, they will be able to offer a safe working environment. Enacting a law to eradicate this societal problem of Sexual Harassment has been a great job from the government's perspective. The implementation process is a significant factor to consider. Women must be empowered via educational programmes and information that will bring them to recognise and exercise their fundamental rights¹⁶. The government ensures that women and men are treated equally. Through films, news, commercials, and plays that are accessible to the public, as well as other sources such as debates and discussion programmes, the media may help to alter people's views. If the women's group or the employees become aware of any such harassment, they must notify the complaint committee. It is the committee's responsibility to keep everything private. Every female employee should be aware that it is the legal accountability of the employer to create a safe working environment for women. All male employees must realise that such events have a negative impact on a woman's health, confidence, and ability, and may lead to her quitting the job.

CONCLUSIONS

At last, social acceptability should be a priority. Women should not be afraid to express their problems and complaints. They must have had a lot of guts to stand out for themselves. The general public must be more involved in public awareness campaigns and play a more active role in government. The eformis required as one of the act's limitations is that it excludes males from its coverage. This isn't a reasonable treatment. The Act should be modified to include men as well, so that they may file grievances or complaints with the Internal Complaint Committee/District Committee, demonstrating and proving equitable treatment of men and women in the workplace¹⁷.

REFERENCES

1. Sahu, A. (2018). *Combatting Sexual Harassment of Women at Workplace*. *International Journal of Trend in Scientific Research and Development*, Volume-2(Issue-3), 2239–2242. <https://doi.org/10.31142/ijtsrd12745>
2. Rostamzadeh, E., & Mehregan, R. T. (2016). *Perspective on Sexual Harassment of Women in Workplace*. *Mediterranean Journal of Social Sciences*. <https://doi.org/10.5901/mjss.2016.v7n2p69>
3. <https://indiankanoon.org/doc/1031794/>
4. McDonald, P. (2011). *Workplace Sexual Harassment 30 Years on: A Review of the Literature*. *International Journal of Management Reviews*, 14(1), 1–17. <https://doi.org/10.1111/j.1468-2370.2011.00300.x>
5. Banoo, S. (2020). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013- Legislative Commentary*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3697540>
6. Walmikkachru, S. (2019). *Gender inequality & workplace harassment of women in India*. *Arts & Humanities Open Access Journal*, 3(6). <https://doi.org/10.15406/ahoaj.2019.03.00140>

¹⁶Yaqoob, A. (2019). Harassment of Women at Workplace. *International Journal of Trend in Scientific Research and Development*, Volume-3(Issue-4), 185–189. <https://doi.org/10.31142/ijtsrd23590>

¹⁷Chadha, A. (2018). Law Relating to Sexual Harassment of Women at the Workplace in India: A Critical Review. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3171264>

7. Dr. Paramita Dey, Dr. P. D. (2013). *Sexual Harassment At Workplace – An Empirical Study To Understand Through The Lenses Of Working Women Of Guwahati, Assam, India*. *IOSR Journal of Humanities and Social Science*, 8(6), 77–82. <https://doi.org/10.9790/0837-0867782>
8. Bothra, N. (2014). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2498990>
9. Lee, J., & Oh, M. (2020). *Combat Workplace Sexual Harassment by Third Parties? Reframing Institutional Measures and Cultural Transformation in South Korea*. *Violence against Women*, 107780122096990. <https://doi.org/10.1177/1077801220969901>
10. Bothra, N. (2014). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2498990>
11. Chadha, A. (2018). *Law Relating to Sexual Harassment of Women at the Workplace in India: A Critical Review*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3171264>
12. Banoo, S. (2020). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013- Legislative Commentary*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3697540>
13. McCarthy, C. (2018). *Take steps to prevent, address sexual harassment in the workplace*. *Campus Legal Advisor*, 18(8), 1–5. <https://doi.org/10.1002/cala.30758>
14. Shaikh, A. (2020). *Areas of Improvement in the Legislations of Sexual Harassment of Women at Workplace*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3556447>
15. Vauquiline, P. (2019). *Sexual Harassment of Women at Workplace in Assam: The Present Scenario*. *Space and Culture, India*, 7(3), 1–13. <https://doi.org/10.20896/saci.v7i3.717>
16. Yaqoob, A. (2019). *Harassment of Women at Workplace*. *International Journal of Trend in Scientific Research and Development, Volume-3(Issue-4)*, 185–189. <https://doi.org/10.31142/ijtsrd23590>
17. Chadha, A. (2018). *Law Relating to Sexual Harassment of Women at the Workplace in India: A Critical Review*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3171264>

