



# Sexual Harassment of Women at Workplace

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Date of Submission: 22-02-2021

Date of Acceptance: 06-03-2021

## ABSTRACT

To rephrase the words of Maslow, bodily satisfaction is the uttermost natural human need to exist and hence, sexual crimes have always existed in one form or the other. Women have been a prey since time and age due to patriarchal demons looming large before them. 21<sup>st</sup> century has seen an upliftment of women and they have found a place in the work force. But, sexual violation is an integral part of their work lives. The Authors, by the means of this paper have attempted to access the connotation of sexual harassment with the ambit of sexual harassment of women at work place and have attempted to understand the laws that government has passed on the same, including prevention, prohibition and redressal of such criminal activity. The purpose of this paper is to shed light on the ever evolving sexual misconduct in the work place for women. This research is resorted to secondary sources that are essential and important for data analysis. The sources for collecting secondary data are articles, internet and other research journals, books and exposed acts in the light of the subject. The research focuses on the causes of increasing sexual harassment of working women and the spurt of countless sexual violation cases in the IT Sector and Film Industry. The sexual harassment laws and precedents passed by the judicial pillar of India have been analyzed to understand India's fight against sexual harassment. The steps taken by the industries in making their working environment more considerate and safe for women have also been looked into.

**KEYWORDS:** Sexual harassment, Workplace, Women, IT Sector, Film Industry.

## I. INTRODUCTION

Terrence beautifully quoted in one of his plays, "Homo sum: humani nihil a me alienum puto", meaning, "I am human: I consider nothing human is alien to me". His attempts at reviving the human unity through the dark ages were looked upon as a light of hope for the coming disparity of the world. Ages have passed, but human dignity is still alien to most of us. Sadly enough, the weakest race

possible: women, have to bear the brunt of it. A workforce only consisting 27% of one half of its population is in dire need of representation for the economy to flourish<sup>1</sup>. But what good will be an economy harnessed at the cost of constant exploitation and harassment owing to one's gender. The Hon'ble Supreme Court in Vishakha Case<sup>2</sup> has defined sexual harassment. The court was of the opinion that sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- (i) Physical contact and advances.
- (ii) A demand or request for sexual favours
- (iii) Sexually coloured remarks
- (iv) Showing pornography
- (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts, is committed in circumstances where under the victim of such conduct has reasonable apprehension that in relation to victims' employment or work whether she is drawing salary, or honorarium or voluntary whether in government, or private enterprise. Such conduct can be humiliating and may constitute a safety problem. The definition of sexual harassment in the Sexual Harassment Act is in line with the Supreme Court's definition in the Vishakha Judgment.

There is no gainsaying that each incident of sexual harassment at the place of work results in violation of the fundamental rights to gender equality and the right to life and liberty. The two most precious fundamental rights granted by the constitution of India. As early as in 1993 at the ILO seminar held at Manila, it was recognized that sexual harassment of women at the workplace was a form of gender discrimination against women. In the opinion of the court, the contents of the fundamental rights granted in our Constitution are of sufficient amplitude to

<sup>1</sup> The Economic Times, India needs to increase women workforce to global average of 48% in 10 next years: Amitabh Kant, Aug 9, 2019

<sup>2</sup> Vishakha v. State of Rajasthan, AIR 1997 SC 3011; 1997 (7) SCC 323; JT 1997 (7) SC 384.



encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. The sexual harassment of female at the workplace incompatible with the dignity and honor of a female and needs to be eliminated and there can be no compromise with such violations, admits of no debate. The message of international instrument as such as the convention on the eliminations on all forms of discrimination against women, 1979 CEDAW and the Beijing declaration which directs all state parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honor and dignity of women is loud and clear.<sup>3</sup>

The Sexual Harassment Act has been enacted with the objective of providing women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment. Sexual harassment is considered as a violation of the fundamental right of a woman to equality as guaranteed under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity as per Article 21 of the Constitution. It has also been considered as a violation of a right to practice or to carry out any occupation, trade or business under Article 19(1)(g) of the Constitution, which includes a right to a safe environment free from harassment.

## II. HISTORY

2/3<sup>rd</sup> work of the world is done by the women. So, they have to work out of home, sometimes with their family member or alone. There is possibility in case of her working alone, of sexual harassment by male colleagues, employer or any other strangers at the workplace. In such circumstances, before 1997 there was no specific law to deal with this problem a question was raised before the hon'ble supreme court in the form of a writ petition which has been filed for the enforcement of fundamental rights of the working women under Article 14, 19 and 21 of the constitution., in view of prevailing climate in which the violation of these rights in not uncommon. With the increasing awareness and emphasis on gender injustice, there is increased effort to guard against such violations and the resentment is also increasing.

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<sup>3</sup> Krishna Pal Malik, *Women and Law* 124(Allahabad Law Agency, Haryana, 1<sup>st</sup> edn., 2009).

During the 1990s the most controversial and brutal gang rape at the workplace involved a Rajasthan State Government employee who tried to prevent child marriage as a part of her duties as a worker of women development program. The feudal patriarchs who were enraged by her ( in their words “ a lowly woman from a poor and potter community”) ‘guts’ decided to teach her a lesson and rape her repeatedly.<sup>4</sup> After an extremely humiliating battle in the Rajasthan High Court the rape survivor did not get justice and the rapist “educated and upper caste effluent men” were allowed to go free. This enraged a women’s rights group called Vishakha that filed a Public Interest Litigation in the Supreme Court of India.<sup>5</sup>

The hon'ble supreme court has evolved a principle by fixing duties of the employer to protect women workers at working place, the court held that “ it shall be the duty of the employer or any other responsible person in workplaces or other institutions to prevent or detect the commission of acts of sexual harassment by taking all steps required. The hon'ble supreme court has laid down the guidelines under Article 141 of the Constitution to prevent sexual harassment of working women in the place of their working until legislation is enacted for the purpose.”<sup>6</sup>

The Supreme Court of India, in 1997, in the Vishaka Judgment, for the first time, acknowledged sexual harassment at the workplace as a human rights violation. The Supreme Court relied on the Convention on the Elimination of All Forms Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. In its judgment, the Supreme Court outlined the Guidelines making it mandatory for employers to provide for sympathetic and non-retributive mechanisms to enforce the right to gender equality of working women. As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject is drawn-up and enacted, have the effect of law and the Guidelines are to be mandatorily followed by organizations, both in the private and government sector.

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<sup>4</sup> Samihita (2001) : the Polices of Science, Kolkata

<sup>5</sup> Combat Law the Human Rights Magazine, Special on Violence Against Women, Sept-Oct (2003)

<sup>6</sup> Vishaka, (supra)



## LEGISLATIONS

While there were several attempts made to enact a law on this subject previously, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was eventually passed by the Lower House of the Parliament (Lok Sabha) on September 3, 2012, then passed by the Upper House of the Parliament (Rajya Sabha) on February 26, 2013 and received the President's assent on April 22, 2013.

**Scope:** The ambit of the Sexual Harassment Act is very wide and is applicable to the organized sector as well as the unorganized sector. In view of the wide definition of 'workplace', the statute, inter alia, applies to government bodies, private and public sector organisations, non-governmental organisations, organisations carrying on commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals. As per the Sexual Harassment Act, a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment - including transportation provided by the employer for the purpose of commuting to and from the place of employment<sup>7</sup>.

The definition of 'employee'<sup>8</sup> under the Sexual Harassment Act is fairly wide and covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labour, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

▪ **Internal Complaints Committee and Local Complaints Committee:** The Sexual Harassment Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing at least 10 employees. The government is in turn required to set up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The Sexual Harassment Act also sets

out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

▪ **Interim Reliefs:** The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

▪ **Process for Complaint and Inquiry:** The law allows female employees to request for conciliation in order to settle the matter although a monetary settlement should not be made as a basis of conciliation.

▪ **Action against Frivolous Complaints:** So as to ensure that the protections contemplated under the Sexual Harassment Act do not get misused, provisions for action against "false or malicious" complainants have been made.

The Indian Ministry of Women and Child Development ("WCD") had launched an online complaint platform named "SHe-Box", which stands for "Sexual Harassment Electronic Box"<sup>1</sup>. SHe-Box has been introduced to allow female employees or visitors a platform to raise complaints of sexual harassment at the workplace<sup>2</sup>. This facility has also been extended to private sector employees<sup>3</sup>.

'SHe-box', which can be accessed at [www.shebox.nic.in](http://www.shebox.nic.in), seeks to ensure effective implementation of India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It aims at providing speedy redressal of sexual harassment complaints. In the event that a formal complaint is lodged with SHe-Box, based on an assessment of the complaint, the WCD will direct such complaint to the employer's Internal Complaints Committee ("ICC") or the Local Complaints Committee set up by the government at each district ("LCC"), as the case may be. The WCD also proposes to actively monitor the progress of inquiry conducted by the ICC / LCC and keep the complainant updated<sup>4</sup>. SHe-Box also proposes to work as repository providing information related to dealing with workplace sexual harassment complaints. The users are free to access the resources available on SHe-Box for creating awareness<sup>5</sup>. The WCD promises to ensure that the identity of the aggrieved women / complainant is kept confidential<sup>6</sup>.

## III. STASTICAL DATA

**Mumbai:** Registered cases of sexual harassment at Indian workplaces increased 54% from 371 in 2014

<sup>7</sup> Section 2(o), Sexual Harassment Act, 2013

<sup>8</sup> Section 2(f), Sexual Harassment Act, 2013



to 570 in 2017, according to official data. Number of complaints registered under the category of Sexual Harassment at Workplace, State/UT wise

during last three years and current year i.e. 2015, 2016, 2017 and 2018

Sno.	State	2015	2016	2017	2018
1.	A & N Islands	2	2	0	1
2.	Andhra Pradesh	4	11	12	2
3.	Assam	1	6	6	3
4.	Bihar	12	20	15	20
5.	Chandigarh	3	4	2	3
6.	Chhattisgarh	5	6	6	2
7.	D&N Haveli	-	1	0	0
8.	Delhi	100	82	77	55
9.	Goa	1	-	2	1
10.	Gujarat	15	7	12	7
11.	Haryana	33	30	39	37
12.	Himachal Pradesh	5	-	3	2
13.	Jammu & Kashmir	3	5	3	0
14.	Jharkhand	14	9	4	4
15.	Karnataka	21	22	38	14
16.	Kerala	9	9	4	7
17.	Madhya Pradesh	38	35	39	23
18.	Maharashtra	28	35	41	22
19.	Manipur	-	-	-	-
20.	Meghalaya	-	-	-	-
21.	Nagaland	1	-	-	-
22.	Odisha	5	9	8	5
23.	Pondicherry	1	1	3	3
24.	Punjab	6	8	16	14



25.	Rajasthan	23	31	31	28
26.	Sikkim	-	1	1	0
27.	Tamil Nadu	24	38	17	17
28.	Telangana	20	12	8	10
29.	Tripura	1	-	1	0
30.	Uttar Pradesh	120	129	147	231
31.	Uttarakhand	8	5	7	7
32.	West Bengal	19	23	28	15
33.	<b>Total</b>	522	539	570	533

In all, 2,535 such cases were registered over the four years ending July 27, 2018--that is nearly two cases reported every day--as per government data tabled in the Lok Sabha (lower house of parliament) on July 27, 2018 and December 15, 2017

The first 7 months of 2018, ending July 27, 533 cases of sexual harassment were reported across the country, as per the data. India witnessed a US inspired #MeToo movement, following allegations of rape and molestation against movie mogul Harvey Weinstein. Several women took to social media and voiced their personal stories of harassment and out alleged perpetrators.

Tanushree Dutta, a model and Bollywood actress, was the first to come forward and allege harassment by actor Nana Patekar on the sets of a movie "Horn Ok Please". She then filed a fresh complaint with the police naming Patekar, choreographer Ganesh Acharya, producer Samee Siddiqui and director Rakesh Sarang. On October 11, 2018, she recounted to the police how Patekar had inappropriately touched her on the sets of the movie. She made these allegations in an interview September 25, 2018 to the television channel Zoom.

MJ Akbar, former editor of *The Asian Age* and *The Deccan Chronicle*, minister of state of external affairs, was accused by 10 women journalists so far of sexual harassment at the workplace. He summoned young female journalists to hotel rooms and harassed them at work. The Congress, has demanded Akbar's resignation.

To everyone's dismay, the highest guardian of the integrity of law and order in the country, the Hon'ble Chief Justice of India was

under the purview of sexual harassment allegations by a Supreme Court staffer that went under trial under questionable circumstances finally giving a clean chit to the CJI.

#### IV. OUR ANALYSIS

The Sexual Harassment Act is a much significant step towards ensuring women a safe and healthy work environment. The list below some issues in relation to this new legislation.

1. The Sexual Harassment Act is not gender neutral and is only concerned with the protection of women employees. Male employees, if subjected to sexual harassment, have no right to claim protection or relief under the law.

2. As per the recommendations made by the standing committee, the definition of 'aggrieved woman' does not make any reference to victimization (on the part of the employer) of the employee who has made the complaint of harassment, which would be fairly common in these situations. The definition of the 'sexual harassment', the words 'textual, verbal, graphic, physical, or electronic actions' are absent in the definition, presence of which would have brought about more clarity, owing to the technological advancements

3. Constituting an ICC all administrative units or offices may become a challenge for the employer. The training of ICC members becomes extremely keen because they are to be replaced every 3 years. Further, the law does not provide enough clarity as to who would be the Chairperson of ICC in case of absence of senior female employee. Infact, the composition of the members is not in odd numbers,





which would have been helpful in arriving at key decisions.

4. The ICC also needs to involve a member from amongst NGOs or associations that are committed to the cause of women and have legal knowledge. Employers may not be comfortable with such cases considering the sensitivities surrounding this issue and the need to maintain strict confidentiality.

5. The law obligates the employer to address the grievances in a stipulated time period, which may become a hassle, since the people involved may or may not easily or readily co-operate.

6. In case there is a false or malicious complaint, the law allows the employer to initiate action against the complainant. This provision, tends to defeat the purpose of the law, since, it deters the victims from reporting such cases and filing complaints, although it was meant to protect the employer's interests.

7. The Sexual Harassment Act allows the ICC to recommend to the employer to deduct from the sums from the salary of the respondent that it may consider appropriate to be paid to the aggrieved woman, when the case is proved. However to restrict the nature of deductions that may be made from an employee's salary, there may need to be made certain corresponding changes to the Payment of Wages Act, 1936 of India,

8. The act does not levy the onus on the employer for any monetary liability in case of harassment on the part of one employee against another female employee. Whereas, in developed nations like the US, despite no exclusive law on sexual harassment, just on the arises of case laws, a vicarious liability arises on the employer in certain cases.

9. In spite of the enactment of the Anti-Harassment Law in 2013, the WCD has been receiving sexual harassment complaints<sup>8</sup>. This indicates that either there are employers that may not have a fully functional ICC or necessary awareness has not been created at the workplace. It could even be possible those female employees do not have enough confidence in their employer's

internal complaint mechanism or that the investigation has been delayed.

10. According to the National Crime Records Bureau, between 2014 and 2015 (that is, after implementation of the Anti-Harassment Law by the Indian government), reporting of sexual harassment complaints has increased significantly<sup>9</sup>. In terms of statistics, 65.2% of women have reported that their employers do not follow the procedure laid out under the Anti-Harassment Act and 46.7% of the participant companies have admitted that their ICCs are not aware of the legal provisions pertaining to sexual harassment<sup>10</sup>

## V. CONCLUSION

Sexual harassment at workplace is the doom that's looming large before the economic wellbeing of our nation because we conveniently have handicapped one half of our population with our illicit attempts of establishing superiority. At this day and age, there is desperate need of women to pick the tools and for men to take the back seat and wash of the patriarchal juices. Toxic masculinity needs to take rest and women need to find a place outside their kitchen. Although, in a hostile working environment of present day it seems far from reality. Admittedly, the MNCs and giant corporations are realizing the worth of womanpower in their labour and have taken appropriate steps for the legislations to function. But, the greater concern still remains with the smaller businesses and working sectors, probably in some distant area of the country, where the law has neither reached nor is recognized. These women have been oppressed more than anyone and subsequently need a messiah more than anyone. Their savior is none, but their own spirit to rise above oppression and be a contributor to the food that goes into their belly. Only if they are set free. In the words of M.K. Gandhi, "To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man's superior."