

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 4**

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**2021**

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# Sexual Harassment at Work Place & the Credo of Law Implementation

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## ABSTRACT

*“As women and as lawyers, we must never again feel shy from raising our voices against sexual harassment.”*

**-Hillary Clinton**

*With the restructuring of the Indian economy over the last three decades, there has been a significant advancement in women's education in today's era, yet women still have a lower employment rate than men. Despite the fact that some theories claim that women gain more skills than males, women nonetheless have a lower employment rate. There are a variety of causes for women's lower employment rates, the most common of which being workplace sexual harassment. In today's world, sexual harassment of women is a hot topic and a source of concern. Sexual harassment is a violation of women's essential fundamental rights, including their right to equality under Articles 14 and 15 of the Indian Constitution, and their right to life and dignity under Article 21. This research paper examines concerns of sexual harassment against women in India, as well as Indian laws enacted to protect women's rights. This study aims to identify the factors that contribute to a rise in sexual harassment incidents on their own. The male-dominated organisational structure is one of the most prominent factors. From the 1970s to the present, sexual harassment has been on the rise, with 29.20 percent of cases reported in 2015, violating women's basic rights at work. The information for this study came from both primary and secondary sources, and it was analysed utilising a specific research approach and instrument. Finally, the current study suggests that the time has come to take a closer look at the problem and devise preventive measures to properly assess the situation.*

**Keywords** – *Employment Rate, Sexual Harassment, Workplace, The Indian Constitution, Women, Rights, Job.*

## I. INTRODUCTION

There was a period when humans lived in a patriarchal culture dominated by men. There's no denying that in some parts of our country, women continue to face the same male-dominated

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environment. Despite such traditional attitude, many young women in our country are defying our society's old school rules. Smt. Indira Gandhi, our former Prime Minister, was India's first female Prime Minister as well as first female Finance Minister. Ankita Bose, a Mumbai native, became Unicorn's first female co-founder and CEO at the age of 27. Mrs. Meera Sahib Fatima Biwi, the first woman to serve as a Supreme Court judge. There are several other examples of Indian ladies in various fields who are making our country feel proud.

There are a variety of causes for women's lower employment rates, the most common of which being workplace sexual harassment. In today's world, sexual harassment of women is a hot topic and a source of concern. Sexual harassment is a violation of women's essential fundamental rights, including their right to equality under Articles 14 and 15 of the Indian Constitution, and their right to life and dignity under Article 21. The Indian Constitution states that women must be treated equally and that discrimination against women is prohibited in all sectors, including education, skill development, and employment. In order to ensure that women have an appropriate and equal opportunity for employment, our constitution stipulates reservation for women in some educational institutions and public sector employment. Our constitution guarantees a woman every right necessary to enable her to stand on her own feet. The question then becomes, why did we feel compelled to provide them such privileges in our constitution? A woman's sense of safety in society has grown increasingly important in today's culture. It is now critical to create an environment free of violence and discrimination based on gender, and in which women have equal rights in the community, society, and employment.

Workplace sexual harassment is a form of gender discrimination that infringes a woman's fundamental right to equality and existence. Workplace harassment not only makes women feel uneasy, but it also limits their capacity to compete in today's fast-paced world. It has an impact on their social and economic progress in addition to their working lives.

In one of his lectures, our honourable Prime Minister, Mr. Narendra Modi, stated that women make up half of our population, and that if they do not come out and work, our country will never expand at the rate that we all foresee.

There are a number of prominent causes for sexual harassment which are quite perceived in our society. Some of them are as follows:

#### **(A) Male Dominance**

Men have been authoritative in our patriarchal society, i.e., men have been in authority and have made sexual favours to female subordinates. The majority of sexual harassment experienced by female employees is motivated by male power rather than sexual impulses.

**(B) Inferiority in Job Position**

Women have less hierarchical influence in companies than men, as evidenced by our history. Many studies have shown that when women advance in their careers, they are more likely to be harassed. Furthermore, employees in lower-ranking positions in an organisation are more vulnerable to sexual harassment than those in positions of power.

**(C) Higher Academic Profile and Lesser Job Opportunity**

There are many women with higher academic degrees looking for work, but the number of job openings is smaller than for these highly educated women. When these smart women began their search for a position in a corporation, they were hounded and promoted by their superiors through sexual favours. This has become the most common source of sexual harassment in the workplace for educated women.

“A study finds out that the majority of the women in Velore city belongs to 18-28 years. Women with a graduate degree were 39%. Majority of the respondents have work experience below 5 years. Around 50% were earning less than Rs. 8000 per month. The study revealed that 20 to 30 respondents have had to face vulgar words. 50 per cent of the respondents have faced the unwelcome word ‘darling’ in their workplace. The study shows that 11% of the respondents faced intrusive question about their personal sexual life. Around 29 per cent respondents repeatedly received many sexual messages or e-mails unwelcomingly.”<sup>2</sup>

Since the day women were granted equal rights to live their lives in the world, our country has been fighting this plague. The Ministry of Women and Child Development of India passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (the "POSH Act"), which is India's first legislative act addressing the subject of workplace sexual harassment. Sexual harassment, stalking, and voyeurism were also made illegal under the Criminal Law (Amendment) Act of 2013. The primary goal of the POSH Act is to prevent and protect women from sexual harassment in the workplace, as well as to provide every woman with a safe, secure, and dignified working environment free of all sorts of harassment.

**II. EVOLUTION OF THE LAW AGAINST SEXUAL HARASSMENT AT WORKPLACE**

The Union Cabinet passed the draft of Protection of Women Against Sexual Harassment at Workplace Bill, 2007 in 2007. The bill was first introduced in the Lok Sabha in 2010, then it was revised and reintroduced in the Lok Sabha in 2012. The Sexual Harassment of Women at

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<sup>2</sup>Dr. Edison Nesa Doss and Mr.Pavan K Mukherjee, “A Study On Sexual Harassment Among Women Workers At Work Place In Velore City” 4 IJAR (2014) p. 36

Workplace (Prevention, Prohibition, and Redressal) Bill, 2012 was passed by the Lok Sabha on September 3, 2012, and the Rajya Sabha on February 26, 2013. On April 23, 2013, the President signed the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, which was published in the Indian Gazette as Act No. 14 of 2013. Finally, on December 9, 2013, the Ministry of Women and Child Development announced that the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act and Rules would take effect on that date.

The Indian Constitution has consistently prioritised the abolition of gender discrimination. However, in the historic case of *Vishaka v. State of Rajasthan* 1997 SCC 241: AIR 1997 SC 3011, the Supreme Court of India recognised sexual harassment at work for the first time. The Supreme Court of India gave guidelines and directed the Union of India to create an appropriate law to prevent sexual harassment in the workplace in this case. As per *Vishaka* Judgement, “*Sexual Harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:*

- a. *Physical contact and advances;*
- b. *A demand or request for sexual favours;*
- c. *Sexually coloured remarks;*
- d. *Showing pornography;*
- e. *Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

*Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work (whether she is drawing salary or honorarium or voluntary services, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.”<sup>3</sup>*

The following circumstances, among other circumstances, if they occur or are present in relation to or connect with any act of behaviour of sexual harassment may amount to sexual harassment as given under “Section 3 of the Act:

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<sup>3</sup>*Vishaka v State of Rajasthan*, AIR 1997 SC 3011:1997 SCC 241

- Implied or explicit promise of preferential treatment in employment;
- Implied or explicit threat of detrimental treatment in employment;
- Implied or explicit threat about present or future employment status;
- Interference with work or creating an intimidating or offensive or hostile work environment; or
- Humiliating treatment likely to affect the lady employee's health or safety.”<sup>4</sup>

Before the Vishaka Guidelines, in the case of *Rupan Deol Bajaj*, the Supreme Court of India held “*the alleged act of Mr... in slapping Mrs ... on her posterior amounted to outraging of her modesty for its was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady – ‘sexual overtones’ or not, notwithstanding.*”<sup>5</sup>

Also, in the case of *Apparel Export Promotion Council v. A. K. Chopra*, the Supreme Court explained that “*sexual harassment is a form of discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.*”<sup>6</sup>

In 2010, the Delhi High Court held “*A complete understanding of the complainant's view requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. Men tend to view some forms of sexual harassment as harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.*”<sup>7</sup>

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, the Delhi High Court observed that “*the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgement, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’*

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<sup>4</sup>Section 3(2), *The Sexual Harassment of Women at Workplace Act, 2013*

<sup>5</sup>*Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr*, 1996 AIR 309, 1995 SCC (6) 194

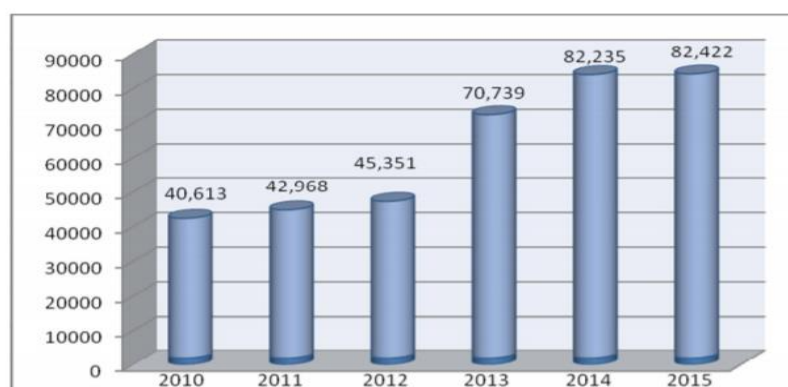
<sup>6</sup>*Apparel Export Promotion v. A. K. Chopra*, AIR 1999 SC 625

<sup>7</sup>*Dr. Punit K. Sondhi v. Union of India & Ors.*, W.P. (C) 367/2009 & CMS 828, 11426/2009

by confining the meaning to the commonly understood expression 'office'. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of video-conferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open from him to say that he had not committed the act at 'workplace' but at his 'residence' and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work;
- Control of the management over such a place/residence where the working women is residing; and
- Such a residence has to be an extension or contiguous part of the working place.”<sup>8</sup>

According to the National Crime Records Bureau, women are subjected to sexual harassment at organisations and institutions, either directly or indirectly, for a variety of reasons. According to the graph below, the number of cases reported under the specific crime of assault on women with the intent to outrage her modesty was 40613 in 2010, and has steadily climbed over the years, reaching 82235 in 2014, with a little increase of 187 instances in 2015. The difference in percentage between 2015 and 2014 is 0.2 percent. When looking at the data from 2010 to 2015, it is clear that there has been a significant increase in the number of assault cases, with 82422 cases recorded. With 11,713 cases reported, Maharashtra leads the way, followed by Madhya Pradesh with 8,049 cases and Uttar Pradesh with 7,885 cases.<sup>9</sup>



Source: National Crime Records Bureau Report 2015, Chapter 5.

<sup>8</sup>Saurabh Kumar Mallick v. Comptroller & Auditor General of India, AIR 2008 Delhi 998

<sup>9</sup>RoufAhmandBhat and Prof. Dr. Anita Deshpande, "An overview of Sexual Harassment of Women at Workplace in India: An Analytical Study" 2 IJRSET (2017) p. 14366

The fact that sexual harassment is not often limited to the principal place of employment has been recognised, and the POSH Act has introduced the concept of a "extended workplace." The POSH Act defines a "workplace" as any location visited by an employee as a result of or in the course of employment, including transportation provided by the employer for the purpose of commuting to and from the workplace.<sup>10</sup>

### **III. EXAMPLES OF CONDUCT AMOUNTING TO SEXUAL HARASSMENT**

Whether an act or conduct would amount to 'sexual harassment' is dependent on the specifics of the act and the circumstances. "The following is an indicative list of conduct that could be considered as sexual harassment:

1. Unwanted sexual advances or propositions;
2. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
3. Offering employment benefits in exchange for sexual favours;
4. Leering;
5. Making sexual gestures;
6. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
7. Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;
8. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
9. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
10. Being forcibly kissed or hugged;
11. Having someone expose their private parts to you or repeatedly staring at a woman's body parts that make her uncomfortable;
12. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;
13. Eve-teasing
14. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
15. Subtle innuendoes or open taunting regarding perfection, imperfection or characteristics of physical appearance of a person's body or shape;
16. Gender based insults and/or sexist remarks;

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<sup>10</sup>Section 2(o), *The Sexual Harassment of Women at Workplace, 2013*



17. Displaying pornographic or other sexually offensive or derogatory material;
18. Forcible invitations for dates;
19. Forcible physical touch or physical assault or molestation;
20. Suggesting or implying that failure to accept a request for a date or sexual favours would adversely affect the individual in respect to performance evaluation or promotion;
21. Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work;
22. Any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of such individual providing or refusing sexual favours;
23. Physical confinement against one's will and any other act likely to violate one's privacy."<sup>11</sup>

According to one of the polls, around 17% of women employees in India suffer workplace sexual harassment, with rates high in both the organised and unorganised sectors. Furthermore, it was shown that 26% of women in the unorganised sector are the sole breadwinners in their families, resulting in economic fragility and the fear of losing their jobs. The 'absence of any complaint process' and 'unawareness of existing redress measures' are two further factors.

#### **IV. COMPLAINTS COMMITTEE UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013**

The most important feature of the Sexual Harassment of Women at Workplace Act, 2013 is that it envisages the setting up of a grievance redressal forum.

##### **(A) Internal Committee**

The Sexual Harassment of Women at Workplace Act, 2013 requires an employer to set up an 'internal committee' at each office of an organization employing 10 or more employees, to redress the grievances pertaining to sexual harassment.<sup>12</sup> Failure to constitute the IC has led to imposition of fine under the Sexual Harassment of Women at Workplace Act, 2013.<sup>13</sup>

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<sup>11</sup>Nishtha Desai, "India's Law on Prevention of Sexual Harassment at the Workplace" 2013

<sup>12</sup>Section 4, *The Sexual Harassment of Women at Workplace Act, 2013*

<sup>13</sup>*Global Health Private Limited & Mr. Arvinder Bagga v. Local Complaints Committee, District Indore and Others*, W.P. No. 22314 of 2017

### **1. Composition of the Internal Committee**

The IC should be led by a Presiding Officer who is a woman working at a senior level in that company. Employees should be represented by at least two members, with preference given to those who are devoted to the cause of women, have expertise in social work, or have legal knowledge. There should also be an external member from a women's rights NGO or group, or someone who is experienced with sexual harassment concerns.<sup>14</sup>

Also, not less than half of the IC members shall be women and the term of the IC members shall not exceed 3 years.

### **(B) Local Committee**

At the district level, the government is required to set up a 'local committee to redress the complaints of sexual harassment from the unorganized sector or from the establishments where the IC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.<sup>15</sup> The Local Committee should include a Chairperson who is a prominent woman in the area of social work and devoted to the cause of women, and a local woman who is one of the members to be nominated from among the women working in the block, taluka, tehsil, ward, or municipality in the district. In addition, the Local Committee must have two NGO members, one of whom must be a woman recommended by an NGO or group dedicated to the cause of women or a person knowledgeable about sexual harassment concerns.

## **V. COMPLAINT MECHANISM**

Within three months of the date of the incident, a woman who has been the victim of sexual harassment at work and wishes to file a complaint must submit six copies of the written complaint, as well as supporting documents and the names and addresses of witnesses, to the Internal Committee or Local Committee.<sup>16</sup> If the victim lacks the mental or physical ability to submit a complaint, the legislation allows family, friends, co-workers, and others to do so on her behalf.

### **(A) Punishment and Compensation**

“The Sexual Harassment of Women at Workplace Act, 2013 prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of

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<sup>14</sup>Rule 4, *The Sexual Harassment of Women at Workplace Act, 2013*

<sup>15</sup>Section 5, *The Sexual Harassment of Women at Workplace Act, 2013*

<sup>16</sup>Section 11(3), *The Sexual Harassment of Women at Workplace Act, 2013*

sexual harassment:

- i. Punishment prescribed under the service rules of the organization;
- ii. If the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. Deduction of compensation payable to the aggrieved woman from the wages of the respondent.”<sup>17</sup>

The Sexual Harassment of Women at Workplace Act, 2013 also envisages payment of compensation to the aggrieved woman. “The compensation payable shall be determined based on:

- i. The mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. The loss in career opportunity due to the incident of sexual harassment;
- iii. Medical expenses incurred by the victim for physical/psychiatric treatment;
- iv. The income and status of the alleged perpetrator; and
- v. Feasibility of such payment in lump sum or in instalments.”<sup>18</sup>

## **VI. OTHER LAWS AGAINST SEXUAL HARASSMENT AT WORKPLACE**

### **(A) Industrial Employment (Standing Orders) Act, 1946**

The Industrial Work (Standing Orders) Act of 1946 is a federal statute that mandates that an employer develop and publish consistent employment terms in the form of standing orders. According to the Act, standing orders must include terms of employment such as pay, working hours, attendance, shift work, and late arrival, as well as provisions for leaves and employee termination, suspension, or dismissal. Model Standing Orders are prescribed by the Standing Orders Act, which contains a list of behaviours that constitute "misconduct," including sexual harassment.

### **(B) Indian Penal Code, 1860**

There are some offences under the Indian Penal Code, 1860 that could be triggered in the case of sexual harassment.

- Section 354: Outraging the modesty of a women

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<sup>17</sup>Section 13, *The Sexual Harassment of Women at Workplace Act, 2013*

<sup>18</sup>Section 15, *The Sexual Harassment of Women at Workplace Act, 2013*

- Section 354-A: Sexual harassment by a man
- Section 354-B: Assault or use of criminal force to woman with intent to disrobe
- Section 354-C: Voyeurism
- Section 354-D: Stalking
- Section 509: Insulting the modesty of a woman

## VII. CONCLUSION

Sexual harassment is regarded as one of the most serious concerns that has a detrimental impact on the workplace. The concerns of sexual harassment towards women were explored in this research paper, as well as the Indian legislation enacted by the government to protect women's rights. The Sexual Harassment of Women at Workplace Act of 2013 is an important step in protecting women from the rising rate of workplace sexual harassment and providing a venue for victims to seek remedy. Despite the fact that the Act has a lot of flaws, it has transformed the work atmosphere for women. By adopting a policy for the company, the Act established a healthy working environment for female employees. Working women make up a significant portion of the working population in India, and it is the government's responsibility to ensure their safety in the organisations where they work. To safeguard the organisation against this evil, top-level leaders should devise new tactics. There should be no gender discrimination in the workplace, and women should be treated similarly to men. Effective policy implementation can help to lower the country's sexual harassment rate, but first and foremost, women should not accept everything as it is, since now is the moment to speak up against the injustices that have been done to them.

***“A woman is like a tea bag. You can't tell how strong she is until you put her in hot water.”***

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