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# Sexual Harassment of Women at Workplace: A Review

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## ABSTRACT

*The sexual harassment of working women is a burning issue, as more and more women are taking up employment in the public and private sectors. It is often thought that 'working' women are more empowered and such women would stand up against sexual harassment. But, unfortunately the majority of such incidents go unreported. The need for protection of women more and more are felt as incidents of sexual harassment are increasing at a fast pace. Despite various laws on the subject, the cases of sexual harassment are increasing at a shocking rate. It may feel or appear as if teasing, intimidating or offensive comments supported stereotypes or bullying someone based on gender, gender identity, or sexual orientation. Sexual harassment at work place is an expression of deep planted patriarchy currently within the larger society stirring the power based discriminatory practices and successively creating hostile work environments for women. It is a gender specific offence, women are the victim of this offence. The objective of this paper is to furnish an introduction to the varied aspects of sexual harassment as a social problem: its meaning, definition, review of its provisions in IPC, BNS and Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act, 2013. Sexual harassment can be verbal, non-verbal, by visual means or physical, sexual harassment at workplace, hostile work environment for women and ways to cope with such problems. The expected outcome of this paper is the need for development of stringent laws and awareness on the subject.*

**Keywords:** *Sexual harassment, Discriminatory Practices, safe work environment, patriarchy, abuse.*

## I. INTRODUCTION

The right to safe work environment and decent working conditions is a legal right and sexual harassment at workplace violates that very right. Sexual harassment is not new in our society; it is prevalent since time immemorial. Before the year 2012 there was legislative vacuum on the subject; the issue of sexual harassment came into light before the judiciary in 1997, in case of *Vishakha and Others vs. State of Rajasthan and Others*<sup>1</sup>. This is the landmark case in which sexual harassment guidelines were given by the hon'ble Supreme Court making it mandatory

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for employers to prevent the commission of acts of sexual harassment at workplace. The guidelines were made to be mandatorily followed in all workplaces whether private or public institutions for the prevention and enforcement of the right to equality under Article 14 and Article 21 which guarantees Right to life of the Constitution of India. There was a dire need for a legislative framework to redress the issues relating to sexual harassment of women at workplace. In 2013, finally a specific law related with sexual harassment was enforced known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act was passed to provide shield against sexual harassment of women at the workplace and to handle complaints about sexual harassment and related matters or incidental thereto. Sexual harassment is a gross violation of women's fundamental right to equality under Articles 14 and right against discrimination under Article 15 of the Indian Constitution and the right to live a respectful life under Article 21 of the Indian Constitution. Sexual harassment is also a violation of article 19(g) i.e. the right to practice a profession or to engage in a profession, trade or business, which includes the right to a safe environment free from sexual harassment.

#### **(A) Meaning of sexual harassment**

The Oxford English Dictionary defines ‘Sexual harassment as any Behavior characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situations.’

The definition of Sexual harassment as we can read in sec 354(A) of the Indian Penal Code is any physical contact of such a nature which is unwelcome and sexually explicit; or a demand for sexual favors; or showing pornography to the woman against her wish; or making any sexual comments shall be liable for sexual harassment.<sup>2</sup>

## **II. LEGISLATIVE FRAMEWORK**

### **1. Sexual Harassment of Women (Prevention, Prohibition And Redressal) Act, 2013:**

The origin of the act finds place in the case dating back to 1992 wherein a dalit women named Bhanwari Devi, was sexually harassed and gangraped as a punishment for stopping a child marriage of a 9-month-old infant girl in Rajasthan. She was an employee of the Rajasthan government’s Women’s Development Programme. As a “saathin”, as workers in the programme were called, it was Devi’s job to spread awareness about hygiene, family planning and the necessity of educating girls, battling against female foeticide, killing of female child, and infants being married by the elders. A cross country organization of ladies' associations

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<sup>2</sup> Sexual harassment, *available at* <https://blog.ipleaders.in/section-354-ipc/>, (Feb. 4, 2023)

chose to help Bhanwari Devi's battle for equity. Driven by bunches in Rajasthan, the development perceived that Devi was gone after at what was basically her working environment. Without a trace of a regulation that handled such provocation, four ladies' associations documented a writ in the High Court requesting rules that would assist organizations with perceiving, forestall and review lewd behavior in the working environment. The rules came to be referred to in like manner speech as the Vishakha rules.

## 2. Indian Penal Code, 1860:

**Outraging the modesty of a woman: Section 354** of the IPC punishes anyone who assaults any woman or whoever intends to outrage modesty of woman. There is one-year imprisonment which can be extended to five years or with fine or with both.

The Criminal Law (Amendment) Act of 2013 added four new provisions to sec 354.

**Section 354A** gives the definition of sexual harassment, it states that if a man commits any of the following act:

- i) Physical contact and advances involving unwelcome and explicit sexual overtures;
- ii) A demand or request for sexual favors; or
- iii) Showing pornography against the will of a woman; or
- iv) Making sexually colored remarks, such person shall be guilty of the offences of sexual harassment under this section.

The punishment under this section is rigorous imprisonment for up to three years, a fine, or both if he commits any of the crimes listed in (i), (ii), and (iii). In addition, any man who commits any of the offenses listed under (iv) faces a max. one-year sentence in jail, a fine, or both.<sup>3</sup>

**Section 354B** talks about Assault or use of criminal force to woman with intent to disrobe a woman is dealt under this section. A male faces a minimum sentence of three years in prison, with the possibility of seven years, if he employs unlawful force against a woman, forces her undress herself or be naked. This is a cognizable and non-bailable offence.<sup>4</sup>

**Section 354C** talks about Voyeurism as an offence. Any guy who witnesses or takes a photo of a woman engaging in a private act in an environment where the perpetrator is not anticipated to be found can be held accountable for this crime. Moreover, under the conditions of this provision, any dispersal of photographs that includes the casualty's understanding yet doesn't

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<sup>3</sup>IPC 1860, available at [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_5\\_23\\_00037\\_186045\\_1523266765688&orderno=395](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=395) (Feb. 4, 2023).

<sup>4</sup> *Ibid.*

have the aim of being imparted to an outsider will be viewed as an offense. Whenever indicted interestingly, the sentence will be detainment for at least one year and a limit of three years. On the off chance that the denounced is carved out liable a subsequent opportunity, he could confront a base sentence of three years in prison and a most extreme sentence of seven years. It is considered as cognizable and bailable offense at first conviction however it will end up being a non-bailable offense at the subsequent conviction.<sup>5</sup>

**Section 354D:** The offence of stalking is covered under this section. It says that if a man purposely follows or stalks a woman or tries to contact her notwithstanding her absence of concern or watches out for her utilization of the web or other electronic specialized gadgets. At the hour of the main conviction, the guilty party faces a greatest three-year sentence in jail and a fine. In the event that indicted a subsequent time, the sentence might be as long as five years in jail and accompany a fine.<sup>6</sup>

**Section 509: Insulting the modesty of a woman-** This section states that anyone who intentionally insults a woman's modesty through words, gestures, or exhibits objects with the intention of drawing consideration regarding themselves or encroaching upon their protection in some other manner has to carry out upwards of a year in jail, a fine, or both.<sup>7</sup>

### **3. Provision Related To Sexual Harassment Of Women At Workplace Under Bns (Bharatiya Nyaya Sanhita) 2023:**

The President of India gave his assent to the Bharatiya Nyaya (Second) Sanhita 2023 (BNS) on 25<sup>th</sup> Dec. 2023 and it will come into force on the 1<sup>st</sup> of July 2024 replacing the Indian penal code. In the new Bhartiya Nyaya Sanhita, 2023 the provision related to sexual harassment is contained in chapter five i.e. "Of Offences Against Woman and Child of Sexual Offences." The text of the new section is same as the old law, only the section number has been changed **which are as under:**

**Section 74:** *Sexual harassment*

**Section 76:** Assault or use of criminal force to woman with intent to disrobe.

**Section 77:** Voyeurism

**Section 78:** Stalking

**Section 79:** Word, gesture or act intended to insult modesty of woman.<sup>8</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> BNS, 2023, available at <https://prsindia.org/billtrack/the-bharatiya-nyaya-second-sanhita-2023> (Feb. 5'2023)

### III. JUDICIAL RESPONSE

In a landmark and first of its kind case of 1988, **Rupan Deol v. K.P.S Gill**<sup>9</sup>, also known as the ‘butt slapping’ case. A lady IAS officer Mrs. Rupan Deol Bajaj of Punjab cadre was working as the Special Sect. Finance, complained to IG of Police alleging offences under sec 341, 342, 352 and 509 of the IPC against the then DGP of Punjab Mr. Kanwar Pal Singh Gill, of the incident which took place on 18<sup>th</sup> July’ 1988 at a dinner party. In the year 1988, the Punjab and Haryana High Court booked Gill under sec 354 of IPC i.e. Outraging the modesty of women and under sec 509 of IPC i.e. an act, word, or gesture to insult a lady. Mr. KPS Gill was convicted with rigorous imprisonment for three months and simple imprisonment for two months along with a fine of Rs. 2 lakhs. In 2005, appeals were made to SC which ultimately reduced the punishment to probation. She was successful in securing a conviction of her offender under Sections 354 and 509 of the IPC, these are the provisions under which no women had files a case ever since the inception of IPC, 1860.<sup>10</sup>

Another landmark case on the subject is **Vaisakha vs. State of Rajasthan**<sup>11</sup> in which the hon’ble Supreme Court gave guidelines on Sexual harassment at workplace and also called out to create a legislation on the subject. Sexual harassment of women at workplace infringes the right of work to life, right against discrimination, right to equality, etc. provided under the Indian constitution. The Vishakha Guidelines are a set of instructions that the Court offered in its ruling for employers and other accountable individuals or organizations to promptly guarantee the prevention of sexual harassment. Finally, in order to stop sexual harassment of female employees at work, the Prevention of sexual harassment of women at workplace Act, 2013 was implemented.

In case of **Tuka Ram And Anr. Vs. State of Maharashtra**<sup>12</sup>, also known as the Mathura case. In this case, a girl named Mathura was raped by two police officers in police station. A case was filed under sec 376 of IPC, both the police men was acquitted by the trial court as well as high court on the ground that the girl consented to the act. Appeal was filed in the Supreme Court, and it was clear that there was no consent. Absence of resistance does not mean consent and consent has to be clearly communicated. It led to conviction of both the policemen. It also set a good precedent of consent in these kinds of cases.<sup>13</sup>

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<sup>9</sup> 1996 AIR 309

<sup>10</sup> Me-Too, available at <https://thewire.in/women/rupan-deol-bajaj-kps-gill-case-me-too> (Feb., 5, 2023)

<sup>11</sup> (1997) 6 SCC 241

<sup>12</sup> AIR 1979 SC 185

<sup>13</sup> Case analysis, available at <https://www.legalserviceindia.com/legal/article-11691-case-analysis-of-tukaram-v-state-of-maharashtra.html> (Feb., 5, 2023)

#### IV. CONCLUSION

In India, sexual harassment is very common phenomenon. The government must take out stringent measures to guarantee that legislation passed is carried out correctly. It should be made evident that there would be no tolerance for any sexual harassment incident and the perpetrator. Most of the incidents go unreported because of the trauma, fear in the mind of victim and re-victimization by the society and the accused. An initiative known as SHE-box was launched by the Ministry of Women and Child Development in the year 2019<sup>14</sup> to give a platform to women to report such incidents and check the progress of the complaint made not revealing the identity of the women to the accused. In order to check sexual harassment, an organization should have clear cut policy to register complaints of such nature and procedure for taking disciplinary action against the abuser. Such directions are already given by the Supreme Court judgment, it's only the implementation that is required. Every organization should have an effective employment policy that ought to ensure well planned career paths based on merit to reduce the vulnerability of individuals and harassment by those who abuse their power and authority. There should be awareness among the staff members about what can be the consequences they would face if they indulge in such an act. They should know assume their professional and social responsibilities to prevent such incident in their organization. The victim should be accommodated to complain about the sexual harassment to the authorities for disciplinary action against the abuser, as working in a toxic environment is not possible. Sexual harassment at the workplace is still very much in existence today more than ever. Studies reveals that sexual harassment is a not a recent emerged social evil which is growing with extreme speed and gives much concern to the authorities about the issue. The present study also lays down the different types and causes of sexual harassment. Sexual harassment at work place is a sensitive issue and gross violation of legal rights of women. Despite decades of prevalence as a social evil and advocacy, sexual harassment remains a serious and pervasive problem across all industry sectors and workplaces. No sector remains untouched by sexual harassment, nor unaffected by its impacts: Sexual harassment greatly impacts the mind and health of the victim. It lowers the self-esteem of the victim, disturbs lives, health, financial independence, and working lifestyle of countless victims, lowers their morale, effectiveness, and talent. But due to shame and fear of insult in society, sexual harassment incidents go unreported and the abuser roams freely in society. At last, every working lady should realize that the time has finally come to battle back for such treacheries in the protection provided by law.

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<sup>14</sup>She-box, *available at* [https://shebox.nic.in/user/about\\_shebox](https://shebox.nic.in/user/about_shebox) (Feb., 5, 2023)

**(A) Suggestions**

1. All the organizations should train their employees regarding workplace environment and to abstain from sexual harassment and its legal implications.
2. Seminars, workshops and mock drills should be organized by the competent authority for creating awareness about the evil practice of sexual harassment.
3. Maximum job opportunity and promotion slots should be reserved for women which will help them not get emotionally tracked and avoid their future worry and not fall a prey to abusers.
4. Internal complaints committee and grievance cells should be established in every organizational setup wither it is governmental or private, to monitor the cases of sexual harassment.
5. Legal awareness programs about sexual harassment should be arranged and organized by each department whether government or private sector which will help in making a safe work environment for women.

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