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The Demarcation of Inappropriate Behaviour of Sexual Harassment of Women at Workplace

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ABSTRACT

Sexual harassment in the workplace remains a widespread problem that continues to affect societies globally, significantly impacting the well-being, careers, and aspirations of women. This research paper explores the multifaceted dimensions of sexual harassment faced by women in professional settings, shedding light on the often overlooked aspects beyond legal doctrines. Through a comprehensive analysis of qualitative data, and workplace case studies, this research examines the lived experiences of women who have encountered sexual harassment in diverse work environments. By adopting a non-doctrinal approach, this study transcends legal frameworks to explore the broader sociocultural, psychological, and organizational contexts that contribute to the perpetuation of this problem. The paper identifies the various forms of sexual harassment, ranging from explicit behaviors to subtle, implicit biases, and their detrimental effects on women's mental health, job satisfaction, and career progression. It examines the power dynamics, stereotypes, and social norms that allow harassment to continue and significantly impact workplace dynamics. Moreover, the research investigates the strategies employed by organizations, individuals, and support networks in addressing and preventing sexual harassment. It critically examines the effectiveness of existing policies, training programs, and reporting mechanisms, highlighting areas for improvement. By shedding light on the complexities of this issue, it seeks to inform policymakers, organizations, and individuals, encouraging them to take proactive measures in creating safe and inclusive work environments where all women can thrive without fear of harassment. The findings of this study underscore the urgency of addressing this issue comprehensively and emphasize the role of culture and education in fostering lasting change.

Keywords: *Sexual Harassment, POSH Act, Workplace, Factors.*

I. INTRODUCTION

“You took away my worth, my privacy, my energy, my time, my intimacy, my Confidence, my

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own voice, until today.”

~ Emily Doe

Victim Impact Statement, *People vs. Turner*³

In the present-day scenario, sexual harassment is a serious and widespread problem that affects the whole of humanity, especially women working in different settings and industries. It violates human rights and hinders social and economic progress. The term harassment demarcates the behavior of an individual that humiliates, dishonors, downplays, intimidates, dismays, or terrorizes any other individual or puts that certain individual in fear relating to the person or any other person.

Harassment could be mental or physical, which may include asking for favors, pushing a particular person to do something that the person denies doing, making that person feel uncomfortable, and so on talking about the physical aspect of it; it could be inappropriate touch, asking or demanding sexual favors and etc.

Sexual harassment represents a significant infringement upon the fundamental rights of women to equality and personal dignity. It originates from a patriarchal mindset that fosters the belief in male superiority and, disturbingly, condones certain types of violence against women. Workplace sexual harassment, in particular, is sometimes unjustly downplayed as innocuous and inconsequential, often rationalized as 'normal' male conduct or 'innocent flirting' that women appreciate.

Contrary to these notions, it inflicts substantial harm and unequivocally showcases gender discrimination within the workplace. It not only violates a woman's fundamental rights, as outlined in Article 19 (1) (g) of the Constitution of India⁴, which bestows the right "to practice any profession or engage in any occupation, trade, or business," However, it also undermines the principles of equality and jeopardizes workers' physical and psychological well-being.

This, in turn, results in decreased productivity and has adverse effects on people's lives and livelihoods. To further exacerbate the situation, deeply ingrained socio-cultural norms that establish gender hierarchies often place blame on the victim, thereby exacerbating the workplace and societal inequality.

³ “County of Santa Clara, Office of the District Attorney, Former Stanford Student Sentenced to Six Months in Jail, (September 08, 2020).”

⁴ INDIAN CONST. Art. 19(1) (g).

II. THE CHRONICLE OF SEXUAL HARASSMENT

1. The UN's Definition of Sexual Harassment –

- According to the United Nations General Recommendation No. 19 to the Convention on the Elimination of all Forms of Discrimination Against Women, sexual harassment is defined as:
- “Such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”⁵

2. ILO's Definition of Sexual Harassment –

- ILO defines sexual harassment as: “Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated, and/or intimidated.”⁶

3. According to Bularzik –

- “Men believe they have the right to harass female employees because they hold the belief that there was once a "woman's place" that women in the workforce have abandoned, along with their "personal integrity." She claims that the patriarchal traditions are to blame for harassing women.”⁷

4. According to Farley -

- “Sexual harassment is when a guy engages in unwanted, non-reciprocal behavior that prioritizes a woman's sexual identity over her job duties.”⁸

5. According to the Black's Law Dictionary –

- “Harassment in the workplace or discrimination where unwelcome and unwanted advances are made to a person by one or more other employees. The comments are of a personal nature and often sexual in style and manner.”⁹

⁵ Article 11 of CEDAW General Recommendation No. 19: Violence against women.

⁶ 2001.

⁷ 1978.

⁸ 1978.

⁹ <https://www.worldcat.org/title/blacks-law-dictionary/oclc/420487111>.

III. THE EVOLUTION OF LEGAL PRINCIPLES REGARDING WHAT CONSTITUTES SEXUAL HARASSMENT IN INDIA

Until the mid-1990s, Indian courts did not officially recognize the concept of sexual harassment in the workplace. However, there were a few noteworthy exceptions to this trend. In the legal matter involving **Rupan Deol Bajaj vs. K.P.S. Gill**¹⁰, the court recognized sexual harassment as a crime under Section 354 of the Indian Penal Code. This interpretation established that “outraging the modesty of a woman” also includes outraging her dignity.

In a case of **Vishakha vs. State of Rajasthan**¹¹, “The Supreme Court ruled that workplace sexual harassment violated fundamental rights outlined in Articles 14, 15, 19(1)(g), and 21 of the Indian Constitution. For the first time, the Supreme Court of India acknowledged the obvious lack of adequate legislation and recognized workplace sexual harassment as a violation of human rights.

The Convention on the Elimination of All Forms of Discrimination against Women, enacted by the General Assembly of the United Nations in 1979 and accepted by India, served as the foundation for the Vishakha Guidelines. The Vishakha Guidelines were published in accordance with Article 32 of the Indian Constitution.

According to the Vishakha decision, “Sexual Harassment” is defined as any unwanted sexually motivated behavior (whether expressed explicitly or implicitly), including:

- a. Physical contact and advances;
- b. A demand or request for sexual favors;
- c. Sexually colored remarks;
- d. Showing pornography;
- e. Any other unwelcome physical, verbal, or nonverbal conduct of a sexual nature.”

This behavior is known as sexual harassment in the workplace.

In the case of **Apparel Export Promotion Council v. A.K. Chopra**¹², was the first of its kind to reach the Supreme Court following the landmark Vishakha judgment. In this instance, the apex court upheld the dismissal of a senior official from the Delhi-based Apparel Export Promotion Council who was found culpable of sexually harassing a junior female employee at the workplace. The Apex Court reaffirmed the legal principles established in Vishakha

¹⁰ 1995 SCC (6) 194.

¹¹ AIR (1997) 6 SCC 241.

¹² 1997 (24) DRJ 515.

judgment, clarifying that physical contact was not a prerequisite for an act to constitute sexual harassment. The court emphasized that any unwelcome physical, verbal or non-verbal conduct of a sexual nature amounts to sexual harassment.

The Supreme Court elucidated that *“sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favors 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.”*

In 2010, the Delhi High Court in the case of **Dr. Punita K Sodhi vs. UOI**¹³, supported the perspective that sexual harassment is a subjective experience and, therefore, upheld -

“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 a 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.”

This is the first time SC adopted the test called Reasonable Women as the reasonable person test creates biases in favor of men and ignores the impact of inappropriate behavior on women. Ironically, this occurs 16 years later.

Medha Kotwal & Others vs. Union of India & Others¹⁴, “In this case, the respected court asserted that every citizen carries a social and moral duty to oppose all types of violence. The court reiterated the significance of the Vishakha guidelines, affirming that victims can directly approach the High Court of their respective state where the incident occurred if these guidelines are violated. In an effort to diminish such crimes, the court, building upon prior directives, introduced specific new guidelines as¹⁵ –

- Firstly, all state governments must amend the Central Civil Service Rules with proper measures within two months.

¹³ 2010 172 DLT 409.

¹⁴ 2012 STPL 616 SC Jurisdiction.

¹⁵ Economic Weekly Vol. 48, No. 40 (2013), pp. 18-19, 22-23 (4 pages).

- More complaint committees should be incorporated to ensure that if any crime has been committed, the victim's problem is heard and resolved in the best possible manner.
- The state should take the initiative to incorporate different measures for following up on the guidelines stated herein and the Vishakha guidelines for the betterment of society.
- All bodies, institutions, bars, and universities are directed to implement the Vishakha guidelines with proper care.”

“Once again, the court provided precise directives in this regard, demonstrating its comprehension of the gravity and impact of the crime on the victims.”

State Of Maharashtra vs. Madhukar Narayan Mardikar¹⁶, “In this case, a police inspector forcibly assaulted a woman at night. The woman had a history of extramarital affairs and was unemployed. The police inspector claimed he found her involved in illegal alcohol trade. Initially, the Bombay High Court acquitted the accused, citing the woman's unchaste character. However, when the case reached the Supreme Court, a thorough examination of all case details took place. The Supreme Court overturned the Bombay High Court's verdict, asserting that, as a legal principle, one's personal history should not be used to pass judgment. It emphasized that every victim of sexual harassment has an equal right to seek justice.”

The esteemed court, in its judgment, declared that - *“even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”*

"This case holds significance as it carries binding authority over all courts, as per authority vested in the Supreme Court under Article 141. It sets a precedent that women must not be denied their rights and remedies. Furthermore, it emphasizes the importance of considering the unique circumstances of each case involving sensitive matters to ensure the delivery of justice in the most appropriate manner."

Through the above case and several others, various courts interpreted the term "sexual harassment" and provided different definitions of what constitutes sexual harassment. In this, the Vishakha case is a leading case in which several guidelines were given and also in several cases, court added some more guidelines into it.

In 2013, when the Nirbhaya case was committed, the whole nation was in shock at how a group of six people brutally gang-raped a girl several times, damaging her internal organs and leading to her death. The laws of the country were not stringent enough, although five of the accused

¹⁶ AIR 1991 SC 207.

were given the death penalty and one, who was a minor, was sent to a juvenile home.

After this case the laws were made stronger and stringent and new amendments were done in the law to give stringent punishment related to sexual harassment new provisions were added to deal with sexual harassment and related laws to it.

In the case of **Shanta Kumar vs CSIR 2017**¹⁷, Delhi HC observed that “*Undoubtedly, physical contact or advances constitute sexual harassment if such contact is part of sexually determined behavior. Such physical contact must occur in the context of sexually oriented behavior. A mere accidental physical contact, even if unwelcome, does not amount to sexual harassment. Similarly, physical contact that lacks sexual undertones and is not influenced by the complainant’s gender does not necessarily amount to sexual harassment.*”

IV. TYPES OF SEXUAL HARASSMENT

The two main categories of sexual harassment at work are typically differentiated There is no such distinction made as such in India. The US Supreme Court has stated that even if the distinction is only marginally useful, is not completely immaterial. The grouping is as follows-

1. Quid Pro Quo –

- "This for that" is the literal meaning of the Latin phrase “quid pro quo”. It describes the circumstances in which a boss or co-worker offers concrete work related benefits, such as a promotion, increased compensation, academic development, etc. conditional on obtaining sexual favors from an employee.¹⁸ When a woman refuses to follow such request and demand, there may be retaliatory action taken against her, such as termination, a reduction in status, tough working circumstances, etc. Quid pro quo sexual harassment typically involves demands for sexual favors and threats of retaliation in the workplace are the two main components of it. It suffices for the complainant to demonstrate the issuance of such threats to support a claim of this form of harassment.
- In the case of **Burlington V. Ellerth**¹⁹, “the court ruled that if a supervisor subjects an employee to unwelcome and intimidating sexual advances, and there are no tangible negative job consequences, the employee can seek recourse against the employer without needing to prove the employer's negligence or fault regarding the supervisor's behavior.”

¹⁷ 2017 SCC OnLine Del 11388.

¹⁸ “International Women’s Right Action Watch Asia Pacific (IWRAP) Occasional Paer series No. 7, Sexual Harassment in the Workplace; Opportunities and challenges for legal redress in Asia and the Pacific.”

¹⁹ (524) U.S. 742 (1998).

2. Hostile Working Environment -

- The predominant type of sexual harassment often encountered is the hostile work environment, which pertains to workplace policies or behaviors that create a daunting atmosphere for women to perform their duties. The U.S. Supreme Court in **Harris V. Forklift Systems Sys**²⁰, “held that an abusive work environment exists when it is excessively characterized by acts of discriminatory intimidation, mockery, and contempt that are serious enough to change the victim's employment terms.”
- To accurately assess whether a situation is “hostile or abusive”, it is crucial to consider a comprehensive range of factors. These factors may include the frequency and severity of discriminatory behavior, whether it poses a physical threat or is limited to offensive language, and whether it unduly hinders an employee's ability to perform their duties effectively.
- In the case of **Meritor Saving Bank vs. Vinson**²¹, The US Supreme Court endorsed the federal (EEOC) guidelines on sexual harassment after conducting a detailed examination of what constitutes “hostile environment” sexual harassment. Employees are “entitled to a workplace that is free from discriminatory intimidation, ridicule, and insult.”
- When a harasser's conduct creates a hostile, offensive, or intimidating atmosphere, it constitutes hostile environment sexual harassment. Factors such as the frequency, severity, and nature of the behavior, along with the hostility and offensiveness of the conduct, help determine whether the environment is hostile. Additional considerations include the working relationship with the harasser, whether others perpetuate the behavior, and if multiple victims are affected.
- Behaviors such as discussing sexual activities, excessive physical touching, commenting on physical characteristics, displaying sexually suggestive images, using derogatory or inappropriate terms like "Babe," making sexual jokes and innuendos, and using lewd gestures are behaviors that can contribute to creating a hostile environment.
- A hostile work atmosphere or tacit quid pro quo harassment are two examples of sexual favoritism. When a person in a dominant or controlling position treats one or more others preferentially, it is called sexual favoritism. The accusation of sexual favoritism can

²⁰ 510 US. 17 (1993)

²¹ 477 U.S. (1993)

come from people who don't receive preferential treatment.

- While hostile work environments and quid pro quo harassment are distinct types of sexual harassment, they are interconnected and can often overlap. Due to the shared characteristics and components between them, it is challenging to create a rigid formula to clearly separate one from the other.

V. THE FACTORS RESPONSIBLE FOR SEXUAL HARASSMENT

Today, the issue of women's sexual harassment remains a serious concern. Research indicates a decline in moral values among individuals who fail to understand that harassing a woman at work or fostering a hostile work environment is both reprehensible and legally punishable. The researcher categorizes the reasons that contribute to the magnitude of the sexual harassment problem under two sub-headings:-

1. Social Factors –

- The primary and most significant cause of sexual harassment is the perception of women as inferior in a male-dominated society. Women have long been viewed as mere objects for male pleasure and expected to serve men. Women fall prey to various crimes, including rape, sexual assault, and harassment. The societal attitude has always been one of indifference towards women's issues, and there has been a push to suppress crimes against women to safeguard a woman's and her family's reputation.
- A key issue here is that women themselves, share part of the blame as they fail to unite and support the victims. The victim's life becomes exceedingly difficult due to factors such as declining moral standards, a breakdown in law and order, reluctance to testify about the incident, and advice to remain silent in the face of harassment. Lastly, reported cases of sexual harassment are frequently compromised due to political, social, bureaucratic, and familial pressures, extinguishing any glimmer of hope a victim might have had after mustering the courage to fight back.

2. Other Factors –

- Sexual harassment in the workplace is a widespread issue impacting everyone. Women who encounter such harassment often suffer both physical and psychological trauma. They may feel compelled to resign from their positions, accept undesired promotions, or silently endure the persistent threat of harassment. The severity of these challenges is often highlighted through documented cases of sexual harassment, which reveal the societal and familial pressures, social stigma, and victim-blaming that women face.

- Many women are hesitant to report these incidents due to fear of retribution and the aforementioned issues. In essence, there are numerous and diverse reasons contributing to this escalating problem, varying based on the individual and their specific situation. The following are a few of them -

(1) **Patriarchal Structure:** Men who were brought up believing things like “real men pinch bottoms,” “girls were made to hug and kiss,” and “the more, the merrier” are more likely to carry these social attitudes into the workplace and treat their female employees poorly. Even now, many of these men think that the abuse they give women is praise.

(2) Numerous women who support their families face vulnerability to this wrongdoing, fearing victimization or potential job loss if they reject advances or voice their grievances. Their susceptibility to these situations will also increase as a result of this implied accusation.

(3) **Jealousy at the workplace:** It might also contribute to sexual harassment. Some men’s are uncomfortable with women’s independence at home and at work or are envious of women’s professional achievements. Therefore, once in a position of authority, these men can also try to intimidate women to support their claims. The person who tries and fails doesn’t accept the rejection of unwanted advances, views the unwilling coworker as a challenge, and easily turns into a harasser and targets the unwilling coworker.

(4) Rapid decrease in moral and social status.

(5) No one talks about humanism or equalitarianism.

VI. THE INDICATION OF SEXUAL HARASSMENT

The workplace being a professional habitat, should be free from any form of hostility. It is crucial for employees to operate in a safe environment devoid of harassment. Today’s women, who are sophisticated and adept at juggling personal and professional responsibilities, are a significant part of the workforce, thanks to workplace modernization. These women step beyond their homes to earn and assert their independence.

Therefore, providing them with a safe workplace is crucial for their effective performance. Regrettably, sexual harassment is a common issue in workplaces today. The ‘reasonable woman’ standard is used to classify conduct as harassment. There are several unmistakable indicators that can suggest the occurrence of sexual harassment in the workplace. The following three are crucial signs or symptoms of sexual harassment at work:

(a) **Exploitation of Authority:** It refers to the employer abusing their authority over the

employee, as a request for sexual favors made by someone in a position of authority in exchange for the victim receiving or keeping specific job rewards, such as raises, transfers, or even the job itself.

- (b) **Creating a Hostile Environment:** Unwanted sexual conduct that disrupts a person's work or creates a hostile, intimidating, or offensive work environment. A series of offensive behaviors can create a hostile environment, although in certain cases, a single serious incident may suffice to constitute a violation.
- (c) **Reprisal or Retaliation:** Actions such as declining a sexual favor, reporting sexual harassment, or testifying in support of the victim may lead to retaliation or punishment. Retaliation might involve obstructing the victim's career advancement within the company, manipulating evaluation reports, spreading baseless rumors, or making false accusations against her.

VII. THE CAUSES OF SEXUAL HARASSMENT

Sexual harassment disproportionately affects women due to power dynamics. Women are often more vulnerable, have less self-confidence, or are conditioned to tolerate such behaviour. The root causes are linked to societal expectations of gender roles. Men often view their role as the primary provider for their family, and some see the push for economic gender equality as a threat to this role.

These gender-based roles influence women's status in the workforce and can lead to sexual harassment when men perceive women as economic competitors. Factors such as poor workplace culture, limited understanding of sexual harassment, inappropriate alcohol use, lack of accountability, and lack of diversity can increase the risk.

It's important to note that the victim's behavior or appearance is not the cause of sexual harassment; rather, sexual harassment is a form of discrimination with serious consequences for the victim's mental and physical health. Some causes of sexual harassment include:

1. **Masculine Hegemony** –

- Men in positions of authority often engage in sexual favors with female subordinates. This behavior is commonly perceived as being solely about sexual relations, which is a popular understanding. The actual issue at hand is not sexuality but rather workplace sexism. In reality, the majority of harassment instances do not revolve around fulfilling sexual desires but rather center on safeguarding one's position in the workplace, particularly in highly sought-after professions. “Much of the harassment women face at

the workplace isn't "sexual" in content or design but the motive behind this is to show the domination of male folk. And this kind of behavior determines the gender difference and claims work as a domain of masculine mastery."²²

2. Lower-ranking Position –

- Sexual harassment is a method through which those in power exert control over the less powerful, as women typically hold lower hierarchical positions in organizations compared to men. Findings showing that women are more likely to experience harassment when they advance in their organizations or work in unconventional settings provide credence to this assertion. Rather than the other way around, those with less power are more likely to pay attention to people with greater authority. "This demonstrates unequivocally that those in lower-level positions in organizations or institutions are more vulnerable to sexual harassment than those in positions of authority."²³

3. Assertive Masculine Characteristic of Male Gender. –

- Various studies indicate that individuals who harass can be found in every profession, across all organizational ranks, within and outside of families, and even among college educators. According to some theories, men's intense competition, ego-related worries, and the constant worry about losing their position of authority or power are what lead to sexual harassment. In the view of other guys, they do not want to come across as being frail or less macho. They harass their female coworkers in an effort to assert their supremacy. Therefore, it is evident here that male aggression contributes to sexual harassment of women.²⁴

4. Misperception about Women's Approachable Demeanor –

- It is common for men to start harassing female coworkers, even if they are amiable people. They may believe that because the women are polite, they can ask for sexual favors and expect compliance. However, the women did not intend to signal such interest. This misconception leads to the belief that women are showing sexual interest simply by being nice. Sexual harassment often results from the misunderstanding of a woman's friendly behavior as an invitation for sexual advances, whether in the

²² J. I. Kalyar, "Sexual Harassment Against Women in India: An Overview", *International Multidisciplinary Research Journal*, Vol.2, Issue II, 2015.

²³ "S. G. Baugh, "On the Persistence of Sexual Harassment in the Workplace", *Journal of Business Ethics*, Vol. 16, No. 9, Women in Corporate Management, pp.899-908, 1997."

²⁴ "L. I. Gerdes, "Sexual Harassment", Greenhaven Press, Inc., San Diego, 289009, p.90, 1999."

workplace or in general social settings.

5. Higher Academic Profile and Lesser Job Opportunity –

- We are aware of the fact that there are many women with higher academic degrees seeking employment in our modern society, but there are fewer job openings than there are for these young women with advanced degrees. These competent and capable women faced sexual advances and harassment from their supervisors when they initially embarked on their journey to secure positions in various organizations, whether educational institutions, commercial enterprises, or government sectors, and as a result, were assured employment.
- “This for that”, or "Quid Pro Quo," is the result of higher-ranking male organizational members acting in this manner. Later, when these females are tied to a specific job role within a company, they are frequently approached with sexual offers for promotion, pay raises, and other employment conditions.
- Undoubtedly, this reflects the reality in our current society, significantly contributing to the sexual harassment experienced by young, educated women. The reasons outlined above clearly illustrate how female employees in both public and private sectors endure such mistreatment from their male colleagues. Additionally, numerous statutory and constitutional protections safeguard women's dignity and modesty at work.

6. Patriarchal System Of The Society –

- The notion of male superiority significantly contributes to the infringement of women's rights, including their right to live with dignity. This mindset often leads to inhumane treatment and harassment of women. Despite women being invaluable contributors to society, their status has been undermined due to certain societal norms and practices.
- Historically, women held esteemed positions and played crucial roles in society. They were revered as seers and had the liberty to choose their partners through the practice of Swayamvara. However, over time, societal norms evolved in a way that was detrimental to women's status. Practices such as child marriage, Sati Pratha, and polygamy emerged, leading to a decline in women's societal standing.
- Traditionally, men were involved in activities like wars, hunting, and manual labor, while women were confined to their homes, primarily responsible for household chores. This division of labor resulted in fewer opportunities for women compared to men, leading to their subjugation.

- Many scholars and authors have propagated the notion that women should be under the control of male family members. This perspective has further diminished women's societal standing. The upbringing of men also plays a role in this disparity. Men are often perceived as stronger than women due to biological differences, leading to the misconception that women are easy targets for victimization due to their perceived inability to defend themselves.
- However, with globalization, there has been a shift in this narrative. Women are now serving in various fields such as the army, navy, civil services, etc., standing shoulder-to-shoulder with men. This progress has led to discomfort among some men who feel threatened by this change. In certain situations, this discomfort can manifest as jealousy and result in misuse of power when men find themselves in superior positions.

7. Active Participation in Law Enforcement –

- One of the reasons could be that most of the cases go unreported. The women's are hesitant to report such cases; victims think that if the crime is reported once it will further increase lots and lots of uninvited questions that the victim be subjected to. Another thing about the present media industries; the media is more interested in life carried out by the victim rather than the victimizer.
- This encourages males to control, overpower, and exploit women more whether it can be for mere pleasure, hatred or revenge, etc. It is for society to help elevate the position of women in society without which law enforcement couldn't be helped.

VIII. INTERNATIONAL & MUNICIPAL LAWS GOVERNING SEXUAL HARASSMENT IN INDIA

(A) International Laws & Policies -

There were different international laws, policies, declarations and recommendations given described as below -

a. UDHR

- “Everyone has the right to life, liberty, and security of person”.²⁵
- “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.²⁶

²⁵ Article 3 of UDHR.

²⁶ Article 8 of UDHR.

- “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment”.²⁷

b. CEDAW

- "Discrimination against women, as defined in this Convention, refers to any action or practice based on gender that intentionally or unintentionally hinders or eliminates women's equal access to human rights and fundamental freedoms in all aspects of life, regardless of their marital status."²⁸
- "States Parties strongly oppose all forms of discrimination against women and commit to taking immediate and comprehensive action to eliminate it. This includes:
 - a) Embedding gender equality principles in their national laws and ensuring practical enforcement;
 - b) Enacting laws and measures to prohibit discrimination against women;
 - c) Establishing legal safeguards for women's rights and ensuring effective protection against discrimination;
 - d) Preventing discrimination in all public authorities and institutions;
 - e) Addressing discrimination by individuals, organizations, and businesses;
 - f) Changing or abolishing discriminatory laws, regulations, customs, and practices;
 - g) Revoking any national laws that discriminate against women."²⁹
- "1. States Parties must take appropriate actions to eliminate employment discrimination against women, ensuring equal rights, including:
 - a) The right to work;
 - b) Equal employment opportunities and selection criteria;
 - c) Freedom to choose professions, job security, training, and fair treatment;
 - d) Equal pay for equal work and fair performance evaluation;
 - e) Social security, including retirement, unemployment, and sick leave benefits;
 - f) Health and safety protection, especially regarding reproductive health.
- 2. To prevent discrimination based on marriage or maternity:

²⁷ Article 23 of UDHR.

²⁸ Article 1 of CEDAW.

²⁹ Article 2 of CEDAW.

- a) Prohibit pregnancy-related dismissal and marital status discrimination;
 - b) Provide maternity leave with pay or similar benefits without job loss;
 - c) Support parents with social services, like childcare facilities;
 - d) Offer special protection for pregnant women in harmful work.
- 3. Protective laws in this area should be periodically reviewed and updated based on scientific and technological advancements."³⁰

c. Declaration on The Elimination of Violence Against Women

- "States must denounce violence against women and should not use customs, traditions, or religious reasons as excuses to evade their responsibilities in eliminating it."³¹
- "The ILO Committee of Experts on the Application of Conventions and Recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the Discrimination (Employment and Occupation) Convention (No. 111) of 1958. The ILO's Indigenous and Tribal Peoples Convention (No. 169) also specifically prohibits sexual harassment in the workplace".
- "The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Recognizes her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment".³²

(B) Municipal Laws –

In India, there is a constitution which safeguards the rights of women like Art. 14, 19(1)(g), 21 etc., likewise other laws which talks about the offences against women and likewise describes the punishment for the offence like -

a. The Constitution of India

i. Fundamental Rights

- "Equality before the law –

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."³³

³⁰ Article 11 of CEDAW.

³¹ Article 4 of Declaration on The Elimination Of Violence Against Women.

³² Article 7 of ICESCR.

³³ INDIAN CONST. Art. 14.

- “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth–
 1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;
 2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to;
 3. Nothing in this article shall prevent the State from making any special provision for women and children.”³⁴
- “Protection of certain rights regarding freedom of speech, etc –
 1. All citizens shall have the right;

(g) to practise any profession, or to carry on any occupation, trade or business.”³⁵

- “Protection of life and personal liberty –

No person shall be deprived of his life or personal liberty except according to procedure established by law.”³⁶

“Hence, the right to life encompasses the entitlement of women to dwell with dignity and experience a tranquil existence.”³⁷

In the case **Kharak Singh v. State of Uttar Pradesh**³⁸ SC perceived that, “Article 21 can be defined as a right to be free from restrictions or encroachments on the person, whether those restrictions directly imposed or indirectly brought about by calculated measures.”

In the Vishakha case, the Supreme Court noted that sexual harassment in the workplace constitutes a blatant infringement of fundamental rights, specifically ‘Gender Equality’ and the ‘Right to Life and Liberty.’ This infringement is evident in violation of constitutional Articles 14, 15, and 21. The right to life, as per this context, encompasses living with dignity. The primary obligation for ensuring this safety and dignity through appropriate legislation and the establishment of an enforcement mechanism rests with the legislative and executive branches of government.

In the case of Vishakha, the Apex Court noted that sexual harassment at work violates fundamental rights, particularly ‘Gender Equality’ and the ‘Right to Life and Liberty.’ This

³⁴ INDIAN CONST. Art. 15.

³⁵ “INDIAN CONST. Art. 19, cl. 1, sc. (g).”

³⁶ “INDIAN CONST. Art. 21.”

³⁷ Francis Coralie v. Delhi Administration, AIR 1981 SC 746.

³⁸ AIR (1964) 1 SCR 332.

violation is apparent in the breach of constitutional Articles 14, 15, and 21. The right to life, in this context, includes the right to live with dignity. The primary responsibility for ensuring this protection and dignity through suitable legislation and the establishment of an enforcement mechanism lies with the legislative and executive branches of government.

ii. The Directive Principle of State of State Policies

- “Provision for just and humane conditions of work and maternity relief –

The State shall make provision for securing just and humane conditions of work and for maternity relief.”³⁹

iii. Fundamental Duties

- “It shall be the duty of every citizen of India –
 - a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
 - b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
 - c) to uphold and protect the sovereignty, unity and integrity of India;
 - d) to defend the country and render national service when called upon to do so;
 - e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.”⁴⁰
- “Legislation for giving effect to international agreements –

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”⁴¹

- “Under Seventh Schedule, it gives the central government power to enter into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.”⁴²

³⁹ Art. 42 of DPSP.

⁴⁰ Art. 51(A) of Fundamental Duties.

⁴¹ INDIAN CONST. Art. 253.

⁴² INDIAN CONST. List I of Union List Entry 14.

b. Indian Penal Code

Sexual harassment is not explicitly defined or addressed as a felony under the Indian Penal Code (IPC). Nonetheless, the following legal provisions may come into play when dealing with instances of sexual harassment -

- “Obscene acts and songs;⁴³
- Assault of criminal force to woman with intent to outrage her modesty;⁴⁴
- Sexual harassment and punishment for sexual harassment;⁴⁵
- Assault or use of criminal force to woman with intent to disrobe;⁴⁶
- Voyeurism;⁴⁷
- Stalking;⁴⁸
- Deals with sexual offences like Rape, Punishment for Rape, Sexual intercourse by a person in authority, etc.;⁴⁹
- Word, gesture or act intended to insult the modesty of a women;⁵⁰

c. “Industrial Employment (Standing Orders) Act, 1946”

- The Standing Orders Act has adopted the Vishakha Guidelines and delineates a grievance redressal procedure. The Model Standing Orders, specified in the Act, enumerate behaviors categorized as 'misconduct,' explicitly including provisions related to sexual harassment.

d. “The Indecent Representation Of Women (Prohibition) Act, 1990”

- If a person harasses a woman using books, photographs, films, or comparable materials that could be classified as indecent representation of women, they may be liable under the provisions of the Act.

e. “National Commission For Women Act, 1990”

- The primary role of the NCW is to seek justice for women, safeguard their rights, and promote women's empowerment. In its investigative procedures, the Commission is

⁴³ Section 294 of IPC.

⁴⁴ Section 354 of IPC.

⁴⁵ Section 354(A) of IPC.

⁴⁶ Section 354(B) of IPC.

⁴⁷ Section 354(C) of IPC.

⁴⁸ Section 354(D) of IPC.

⁴⁹ Section 375 to 376(E) of IPC.

⁵⁰ Section 509 of IPC.

granted equivalent authority to a civil court adjudicating a case, as outlined in Section 10(4).

IX. FROM GUIDELINES TO ACT: POSH 2013

(A) Background

In the pivotal *Vishakha and others v. State of Rajasthan*⁵¹ case, the Supreme Court delivered a landmark judgment that led to the formulation of the 'Vishakha guidelines.' These guidelines served as the foundation for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

The Supreme Court's legal reasoning was also rooted in various provisions of the Indian Constitution, notably Article 15, which prohibits discrimination based on religion, race, caste, sex, or place of birth.

Moreover, the Court took guidance from pertinent international conventions and norms, including the General Recommendations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), an accord India adopted in 1993.

(B) About

In 2013, the Government of India enacted the Prevention of Sexual Harassment (PoSH) Act, aimed at addressing sexual harassment faced by women in workplaces. The primary objective of this Act is to establish a secure and supportive workplace atmosphere for women, offering safeguards against sexual harassment.

Under the PoSH Act, sexual harassment includes unwelcome actions such as physical contact, sexual advances, requests or demands for sexual favors, sexually suggestive comments, display of explicit material, and any other unwelcome physical, verbal, or non-verbal behaviors of a sexual nature.

(C) Key Provisions

1. The definition of Sexual Harassment:

- The Act defines sexual harassment broadly as encompassing unwelcome acts, comments, or behavior of a sexual nature that creates a hostile or intimidating work environment. It includes physical, verbal, or non-verbal conduct.

2. Applicability:

⁵¹ AIR (1997) 6 SCC 241.

- The POSH Act is applicable to all the workplaces in India, spanning government and private sector organizations, educational institutions, hospitals, NGOs, and any place visited by employees during the course of employment.
3. Employers' Responsibility:
- Employers must set up an Internal Complaints Committee (ICC) at workplaces employing ten or more individuals to address sexual harassment complaints. In instances where a workplace has fewer than ten employees or is unorganized, the Act stipulates the establishment of a Local Complaints Committee (LCC) at the district level.
4. The composition of ICC/LCC:
- The ICC/LCC should include a chairperson who is a senior female employee within the organization, at least two other employee members (preferably women), and one external member from an NGO or a women's organization.
5. Complaint Procedure:
- The Act delineates a comprehensive procedure for lodging complaints, which includes provisions for submitting anonymous complaints.
 - The complainant has the right to choose whether she wants to pursue the complaint through her workplace's ICC/LCC or through the police and the judiciary.
6. Confidentiality:
- The Act mandates the maintaining of confidentiality throughout the complaint process to safeguard the identities of both the complainant and the respondent.
7. Protection against Retaliation:
- The Act prohibits any adverse action or retaliation against the complainant for filing a complaint of sexual harassment.
 - It also prescribes penalties for false or malicious complaints.
8. Inquiry and Action:
- The ICC/LCC is responsible for conducting a fair and impartial inquiry into the complaint.
 - If the committee finds the respondent guilty of sexual harassment, it can

recommend actions such as warnings, suspension, termination, or legal action as appropriate.

9. Time Frame:

- The Act mandates that complaints should be disposed of within 90 days. An extension of up to an additional 90 days can be granted if there are valid reasons.

10. Annual Reporting:

- Employers must annually report to the government on the number of complaints filed and their disposition.

11. Awareness and Training:

- Employers are required to organize workshops and awareness programs to educate employees about their rights and the provisions of the Act.

12. Reporting to Authorities:

- Employers must annually report to the appropriate authorities, outlining the complaints received and the measures taken in response.

13. Punishment for False Complaints:

- The Act also includes provisions to penalize false or malicious complaints.

14. Applicability Beyond the Workplace:

- The POSH Act extends protection to women against sexual harassment even when they are not in the workplace but are attending work-related events, traveling on official duty, or participating in any occasion connected to work.

15. Legal Redressal:

- If the aggrieved person is dissatisfied with the ICC's decision, they have the option to seek legal redress through the court.

16. Penalties:

- The Act provides for penalties against employers for non-compliance, including fines and cancellation of business licenses in case of repeat offences. Failure to constitute an ICC is punishable.

The POSH Act seeks to establish a safe and secure workplace environment for women and to establish an effective framework for addressing sexual harassment. It places a strong emphasis on prevention, awareness, and redressal of complaints, making workplaces more gender-

inclusive and respectful.

X. CONCLUSION & SUGGESTIONS

Sexual harassment is a deeply entrenched issue that affects women across the globe, hindering their professional growth and personal well-being. In India, as in many parts of the world, the fight against sexual harassment has been marked by a transformation in legal principles, culminating in the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

This research paper has delved into the evolution of legal principles surrounding sexual harassment in India, highlighting significant cases such as *Vishakha vs. State of Rajasthan* that paved the way for the Vishakha Guidelines. These guidelines, subsequently translated into the POSH Act of 2013, have been instrumental in creating safer workplaces and empowering women to report and seek redressal for incidents of sexual harassment.

The paper also elucidated the different types of sexual harassment, ranging from ‘quid pro quo’ to the creation of hostile working environments.

The paper also clarified various forms of sexual harassment, including ‘quid pro quo’ and the creation of hostile work environments. It highlighted several societal and other factors influencing this problem, such as patriarchal attitudes, workplace envy, and a noticeable decline in ethical standards.

International and municipal laws were discussed, underscoring the importance of human rights, gender equality, and workplace safety. The paper acknowledged the significant role played by international conventions like CEDAW and UDHR in shaping India's legal framework to combat sexual harassment.

Furthermore, the paper explored critical provisions of the POSH Act, emphasizing the responsibilities of employers to create a secure working environment for women and the need for awareness and training programs. It also highlighted consequences for non-compliance and penalties associated with it.

In conclusion, the fight against sexual harassment in India has made substantial progress over the years, thanks to the evolution of legal principles and the enactment of the POSH Act. However, the struggle persists. Ongoing efforts are necessary to shift societal perspectives, promote awareness, and guarantee every woman the opportunity to work in a harassment-free and discrimination-free environment. By collectively addressing this challenge, we can cultivate a workplace that genuinely upholds the dignity and rights of every individual,

irrespective of gender.

Some of the suggestions and recommendations through which we can curb sexual harassment and make our near environment safer place for women –

- a) It is advisable for organizations to provide appropriate training to their employees on the subject of sexual harassment and its associated legal ramifications;
- b) A greater proportion of job opportunities and promotional positions should be set aside for women, as this can assist in preventing emotional distress and alleviate concerns about their future prospects;
- c) Competent authorities should arrange seminars, workshops, and simulated exercises to educate individuals about the detrimental issue of sexual harassment;
- d) In both government and private organizations, establishing internal complaints committees and grievance cells to oversee instances of sexual harassment is essential;

Each department within a government and privately owned enterprises should arrange & conduct the awareness of legal rights programs to acquaint women employees with their lawful rights and entitlements etc.
