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**Sexual Harassment: A Threat and Obstacle for Equality and Development**

**Sourav Agarwal and Khyati Mudliyar**

## ABSTRACT

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*We all are moving towards fast developing and civilized society where women and men both are walking with parallel shoulders in every field all over the world but an issue related to sexual harassment has become so common and a major concern. Women and men are all equal in status so that they can enjoy equal participation in all the opportunities of creation. But still, in many sectors, women are disgraced and harassed physically or mentally they are still discriminated against and dominated by men. In the past few years, sexual harassment has become one of the most challenging problems faced by women in society which creates insecurity and a hostile work environment in the workplace. Which is resulting in minimizing the women's participation and contribution towards the economy and social growth of the country? Through this paper, we would like to throw light upon the current scenario and the status towards the women employment and their empowerment and also discuss landmark judgments by the honorable Supreme Court with covering the different legal provision in different enactments in India including the constitution of India to protect women and avoid such practices at workplace.*

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**Keywords:** - *Sexual harassment, Employment, Discrimination, Workplace, Women, and Men.*

## INTRODUCTION:

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Where the Developed Countries are trying to realize of *de Facto* equality between men and women, to achieve an aim centre to the protection of human rights against violence and discrimination persisting in maintaining traditional roles of men and women being an obstruction of full realisation of women's human rights. India is moving towards fast developing and civilized society where women's contribution towards country GDP has risen phenomenally which has also brought us to a realization of issues related to sexual harassment at workplace. Every 1 out of 3 working women are touched by sexual harassment and have become so common and a major concern. Women in India encounter several cases of sexual harassment at workplace like fired out from the workplace for no reason, late promotion, inappropriate favours, resulting in minimizing the women's participation and contribution towards the economy and social growth of the country.

There are so many crimes we often come across against women in our day to day life. In the community, one of the most social evils and the major concern is sexual harassment. Most of us think that sexual harassment is only a physical assault but it is not so it can be physical and mental both even gender discrimination is also one of the forms of Sexual Harassment and due to Sexual Harassment it may have some serious consequences such loss of job, dignity, social status and sometimes suicide also. Sexual harassment is defined as an unwelcome sexual advance or verbal or physical conduct of a sexual nature which has the purpose or effect of unreasonably interfering with the work performance of the individual or bully, antagonistic, insult or derogatory working environment. In simple words, we can say that it is a type of unwanted human relationship or an unnecessary request for some kind of physical favors at the workplace. Sexual harassment is registered its presence at each and every workplace across the world. The term "Sexual Harassment" came to into the existence from the year 1975 onwards prior to that no such term existed to define the word known as "Sexual Harassment"<sup>1</sup> in a legal sense the term sexual harassment was first introduced in the U.S and from there it has started its voyage to the other parts of the globe. In India, the term "Sexual harassment" was first defined in a formal legal sense in the year 1996 by the Supreme Court in Vishaka case<sup>2</sup> which gives some guideline which is mandatory to follow by the employee of the work. This guideline is made to prevent sexual harassment at the workplace which is done against women at the workplace. Sexual harassment causes a big violation of women's right to equality and dignity. We all know that we live in a patriarchal society and there has always been a perception that men are superior or more

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<sup>1</sup> Alok Bhasin, "Sexual harassment at work, (2<sup>nd</sup> ed., 2015).

<sup>2</sup> (1997) 6 SCC 241: AIR 1997 SC 3011.



power than women and this form of violence against women are acceptable and one of those violence includes sexual harassment at the workplace. Many a time excuses are made that it is “natural” male behavior or “friendly interaction” which women also enjoys, but unknowingly this dominance or a harmless flirting may sound offensive and it causes serious harm and violation of women's rights or can derogate the reputation of the women at the workplace.

## **WHAT IS SEXUAL HARASSMENT AT WORKPLACE?**

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Sexual Harassment contains anyone or more of the following unwanted act or conduct of the people toward women at the workplace. It doesn't matter whether it is directly or indirectly or verbal or non-verbal expressed or implied. In the sexual harassment (Prevention, Prohibition, and Redressal) act 2013 under *Section 2(n)* includes:-

1. physical touch or advances;
2. force or request for sexual favors;
3. forcing her to see pornography;

### **Workplace Sexual Harassment Act:-**

It is defined under *Section 3(1)* of the Sexual Harassment of women at the workplace (Prevention, Prohibition and Redressal) act 2013; it says that no woman shall be subjected to sexual harassment at any workplace.

This act makes the right of every woman to a safe and secure place to work and a good working environment too irrespective of her age or employment/ work status. Hence, the right is given to all women working or visiting any workplace whether on a regular basis or a temporary basis or daily wage basis is protected and prevented under this Act.

### **Forms of Sexual Harassment:-**

Generally, there are two types of Sexual harassment at workplaces:<sup>3</sup>

- 1) **Quid Pro Quo** :- It is the drive from Latin word, quid pro quo means “this for that” in this form of sexual harassment where a superior in the position of power, or directly or indirectly asked for sexual favors in returns they are promised for promotion, higher pay,

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<sup>3</sup>Ritu Gupta, “Sexual harassment at workplace: A detail study of the sexual harassment of women at workplace (prevention, protection and redressal) Act, 2013.

etc, When there is refuse to request than they have to meet with vindictive action such as difficult work conditions, dismissal, demotion, etc,.

- 2) **Hostile Work Environment:** - This form of Sexual harassment refers to sex-related behavior which makes the person being harassed feel uncomfortable, thereby creating an intimidating working environment at the workplace, and where supervisors and managers take no step to discourage the inappropriate behavior. Any gestures or offensive remarks, display of obscene videos, pictures, and any materials unnecessary physical touch which may be uncomfortable are some examples of the hostile work environment.

## **STATICAL ANALYSIS OF SEXUAL HARASSMENT AT WORKPLACE**

Today across the whole world Sexual harassment at the workplace is increasing day by day and understood as a violation of women's rights and a form of violence against women. In nature, Sexual harassment is a mirror reflecting male power over women. A recent study has disclosed that almost 17 percent of women workers in India face sexual harassment at their workplace, with frequent rates being high in both organized and unorganized sectors. Further, it says that 26% of women, belonging to the unorganized sector, are the sole earning person of the families and therefore economic danger leads to 'fear of losing the job'<sup>4</sup>. The most common targets are new interns who become the easy preys of their immediate superiors as they promise to pay a high salary, incentives and many other privileges or to give a permanent job due to this false promises fresh employees get easily attracted and directly joins that private sector and become the easy target because in need of a job and even they want to gain experiences. This can be seen from the fact of the cases and reports of sexual harassment which we encounter in daily newspapers and are increasing as a fire in a jungle. But it should be seen that no action has been taken against the accused. Sexual harassment at place of work can be seen as a big and serious problem that must tell or report to the government in order to make and ensure a safe working environment for women at the workplace. If we take a look at the official data which was collected by The National Crime Records Bureau (NCRB) regarding sexual harassment at workplace under the (section 509 of the IPC) which states about insult to the modesty of the women under this category only approx. 320 cases have been registered in 2014-2016. As per the National Commission for Women (NCW) report its states that the number of complaints registered is increasing gradually. In the last four years, there is a sudden hike in these figures. In

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<sup>4</sup>Dr. Edison Nesa Doss, Mr. Pavan K. Mukarjee, "A Study On Sexual Harassment Among Women Workers At Work Place In Velore City" Volume - 4 | Issue - 12 | Dec Special Issue – 2014.

the year 2016, there have been 539 cases which are registered under the category of sexual harassment at the workplace not only this 570 and 965 cases were registered in the year of 2017 and 2018. According to a report also there has been drastic fall participation of the female labor force from 36.7% in the year 2005 to 26% in the year 2018. The data indicating 29 cases that were registered in the month of January only in the year 2019<sup>5</sup>.

## **BASIC REASONS FOR THE GROWTH OF SEXUAL HARASSMENT**

Basically, there is no particular reason for sexual harassment it can happen anywhere, anytime, and to anyone. All-time it creates a question on a victim's mind that why they only humiliated but always ends up with no answers to this question. But here will discuss some of the reason which is quite famous in our society for having sexual harassment.

### **1) Patriarchal Attitude:-**

The powerful men that mean power is in the hand of man, asking sexual favor from the female subordinates. From this one can clearly understand that this kind of male behavior is only about sex to which we call popular perception. Protecting the work is the favored lines of work which sexual harassment says about, Sexual harassment all time doesn't mean satisfying sexual desire and this is not the fact in most of the harassment cases. Much of the harassment faced by women at the workplace has the motivation is that to show the domination of male, not all time harassment at workplace is "sexual" in content or design, and this kind, or behavior show gender difference and man are the only authoritative person and it is male dominating society.

### **2) Low-Level Job position: -**

Women usually placed under less hierarchical power in the organization, and men are placed in higher hierarchical with more power. Sexual harassment serves a way of powerful asserting control over the powerless. This suggestion should be highlighted by that woman at the workplace are most likely to be harassed when they try to move at a higher level of the organization. It can be seen that people with less power are more attentive than the person have more power than the reverse. This clearly says that the person with an inferior job position in an organization is more suffer from sexual harassment at the workplace.

### **3) Egoistic and Aggressive:-**

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<sup>5</sup>Press Information bureau Government of India, Ministry of Women and Child Development, 08/02/2019 by PIB, Delhi. <https://pib.gov.in>

It can be seen that harassers are found in all type of occupation at all organizational levels, inside and outside homes, and even among college professors. We can sexual harassment is an outcome of extreme competitiveness and concerns with ego or there is always a fear of losing a position of power or dominance among men. As men do not want to appear wear or less power in the eye of other men and in order to show their dominance they engage in harassing the women colleagues at their workplace. So this becomes clear here that the man aggressiveness reason for sexual harassment of women.

#### **4) Misperception of open-minded Nature of Women:-**

The women who are quite friendly in nature at the workplace, men started to harass them. The man thinks that women very free in nature and if we asked for sexual favors from them we will easily get it. But that was not what women herself indicated her intention to be. This friendly nature woman with their men colleagues in an organization or in general social setup becomes the cause of sexual harassment.

#### **5) Higher Academic Profile and Lesser Job Opportunity:-**

We can see in our daily life that there are a large number of women in the population who are very educated and are asking for job but that available job positions are lesser than these highly educated young women. when these talented and highly educated women began their journey to find a job in any organization whether an educational institution or other private or government sector they are harassed and asked for sexual favors by a person in a higher position and they are also assured to offer job. This behavior of male authority of an organization who is in higher job position leads to the outcome of 'quid pro quo' and later when a particular girl attached to some job position in an organization they are often asked for sexual offers for promotion, salary increase and many more. No doubt this is surely that case of our present society and this become one of the basic causes of sexual harassment of young educated women.

The above-given reasons clearly<sup>6</sup>show that women either employed in the private sector or in government are made ready to face such humiliation by their male follow mate or colleagues besides this there are a number of legal and constitutional provision protects their modesty and honor at the workplace.

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<sup>6</sup>Rouf Ahmad Bhat, Prof. Dr Anita Deshpande, "An Overview of Sexual Harassment of Women at Workplace in India: An Analytical Study" International Journal of Innovative Research in Science, Engineering and Technology, Vol. 6, Issue 7, July 2017.

## **PROVISIONS ON SEXUAL HARASSMENT AND PPR ACT (2013)**

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In the Preamble of the Indian Constitution also it is stated that "Each and every citizens of India have "equality of status and opportunity" and even equality of every person under the law is guaranteed by Article 14<sup>7</sup>. A safe and secure workplace is a woman's legal right although there no specific provisions regarding sexual harassment are provided in the Indian Constitution. As per the Constitution, Doctrine of equality and personal liberty is guaranteed under Article 14, 15, and 21 respectively of Part III declares as a fundamental right of every citizen. It is rightly pronounced by Dr. A.S. Anand CJ in the case of *Apparel Export Promotion Council v. A.K.Chopra*<sup>8</sup>, that in the case of sexual harassment at the workplace the two foremost fundamental rights are violated which are right to gender equality and the right to live the life with dignity and liberty. These articles tell us that person's right to equal protection under the law, to live a life free from discrimination on any ground and to the protection of life and personal liberty. Gender equality means empowerment to a woman in bringing equal visibility, responsibility, and participation of all the gender in the public and private spheres of life. A developing country like India should try to break the persisting traditional role of a woman in Indian society. Article 14 of the Indian Constitution provides women and men are all equal in status so that they can enjoy equal participation in the public and private sphere but the cultural stigma which has rotten by a male dominance over women and putting a patriarchal pressure to show women as weaker gender in the society. Article 21 of the Constitution provides the right to live with dignity but there is no concrete law especially dealing with Sexual Harassment law at the workplace. There are provisions which deal with the equality which comprises in Part IV of the Indian constitution such as article 38, 39, 39A, 41, and 46.

Some of the provisions of the Indian criminal laws were also invoked although there have been no specific chapters for the offences relating against women they are all provided in the different chapters. Such sections that encapsulate in the case of sexual harassment at the workplace are *Section 209* which deals with obscene acts and songs with the intention to cause annoyance. *Section 354* which states that any assault or any criminal force which outrages the modesty of any women and *Section 354-A*<sup>9</sup> which was inserted in the IPC after the criminal law amendments Act,2013. A heinous crime which is also covered in the IPC under the Section 376 offence of committing rape. Apart from all these codes there is one more Act which is generally covered is

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<sup>7</sup>The Constitution of Indian, 1949.

<sup>8</sup>AIR 1999 SC 625.

<sup>9</sup>Section 354-A was inserted the Indian Penal Code by the Criminal Law(Amendment) Act,2013, which specifically defines the term "Sexual harassment" and also provides punishments, which received and assent of the president on 02/04/2013 and came into effect retrospectively on the 03/02/2013.

The Indecent Representation Of Women (Prohibition) Act 1986 it prohibits any person from drawing any Indecent pictures, paintings, photographs, or any other way which is Indecent or reduces the dignity of any women.

There is a prominent landmark judgment<sup>10</sup> laid down guidelines and also emphasized with the definition of human rights in *Section 2(d)* of the protection of human rights act 1993 and even these guidelines were also considered as law<sup>11</sup> until proper and definite provisions, or legislation was created. The guideline was which should be taken as the preventive measures regarding sexual harassment at the workplace.

- 1) It is the duty of an employer to determine the commission of acts of sexual harassment.
- 2) There should be an appropriate compliant mechanism for addressing the complaints.
- 3) Employees should be given absolute freedom to raise any issues which are related to sexual harassment as well as any misconduct.
- 4) No female employee should be made to stay at the workplace after the sunset if it so then there should be a proper arrangement made to drop her at home.

There was another landmark judgment which was given in favor of the employee in the labor court against the employer. In this case, Justice B.N Shrikrishna had illustrated that Sexual harassment cases can typically include both 'quid pro quo' and 'hostile work environment' elements<sup>12</sup>. There are a lot more cases which but *Vishakha vs State of the Rajasthan* was the first case which had started the Sexual harassment journey and set a benchmark precedent in the Indian judiciary system which had brought a revolution among the women and encouraged the victims of the sexual harassment to come forward and fight against this social evil.

The act of 2013 that is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) was enacted to ensure safety of women at workplace and to build a proper working environment at the workplace. Effective implementation of the act will improve the right to gender equality, life, and liberty, equality in working conditions everywhere. Through the security at the workplace to the women will increase participation which will be helpful for the country to improve its growth and development economically as well as socially of women.

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<sup>10</sup>*Vishakha vs State of Rajasthan* (1997) 6 SCC 241.

<sup>11</sup> The guidelines issued by the Hon'ble supreme court were treated as law declared by the Hon'ble Supreme court under Article 141 of the Constitution of India.

<sup>12</sup>*Saudi Arabian Airlines, Mumbai Vs Shehnaz Mudabhalkal* (1999) 2 LLJ 109 (BOM).

Further this act also provided support to the other Criminal Amendment acts as disused above and created a strong base for providing a healthy work environment for the women.<sup>13</sup>

This is further supported by the UN Convention on the elimination of all forms of discrimination against women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedom in the political, economic, social, cultural, and civil spheres. It means that discrimination and attacks on women's dignity violate the principle of equality of rights.<sup>14</sup>

## **OUTLOOK OF THE SOCIETY TOWARDS WOMEN**

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As the society has already given a title of a vulnerable community to the women and made a preconceived notion that a woman always needs the support of man or they are made to be suppressed by the patriarchal attitudes and the male dominance even still in most of the rural areas women are not allowed to step out of the four walls of the house and work outside in spite of having all the caliber and potential they were treated as a commodity or born to do only the household works and considered as an object to fulfill the sexual desires of men. Not only these women are always humiliated by the primitive thinking of the society about their clothing sense and also restrained from working outside the boundaries of their homes and local limits because of the reasons for safety. In fact, in our own homes, we can see that women are not allowed to take any decisions regarding any matters. A study says that there are approx. 25% of women who are engaged in the banking sectors but out this only 2% are on the top-level management such as Board of Directors and negotiating tables<sup>15</sup>. Moreover in many of the instances, if any women face any sexual harassment at the workplace, they are only pinpointed and rather than being supported even they were advised to quit the job and also not file complaints for the sake of their family reputation in the society.

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<sup>13</sup> Dr. Kalpana Sharma, "Sexual harassment of Women at workplace in India: An Ubiquitous Hazard" ,IOSR Journal of Humanities And Social Science (IOSR-JHSS), volume 22,Issue 9, Ver.9 (September. 2017).

<sup>14</sup>Handbook on "sexual harassment of women at workplace (protection, prevention and redressal) Act,2013.

<sup>15</sup>Report of National commission for Women (NCW), at <https://financialservices.gov.in>.

## **SUGGESTIONS:-**

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Some of the suggestion and advice which will help in the prevention of Sexual harassment action at the workplace.

- 1) All the companies should give information to their workers about sexual harassment and should also tell them about their legal rights.
- 2) There should be proper seminars; workshops should be conducted by the authority to tell on the evil practice of sexual harassment.
- 3) There should proper job opportunities and promotion should be reserved for the women so that they should not get emotionally tracked and avoid their future worry.
- 4) There should be a proper Internal complaint committee (ICC) established in every company whether it is private, government sector to control sexual harassment.
- 5) Legal awareness programs should be arranged by each department of the organizations whether private or government sector which will make familiar to the women employees about their rights and privileges.
- 6) There should be separate special grievances solving programs which should be held by each and every organization at regular intervals and the head of the committee should be women so that there will be no hesitation by the victims to share their experiences and immediate actions should be taken by the organizations against the offender.

## **CONCLUSION**

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No doubt that there are women who are employed in many organized sectors and contributing their best. But despite having so many government policies and laws especially which is made for the women they are still the prey of the discrimination and gender bias or any other serious crimes. We can say that the sexual harassment at the workplace (preventive, prohibition, and Redressal) act 2013 and the concept of the SHe-BOX was one of the great initiatives and a successful step for providing safety at the workplace. In my point of view, all these steps will be more effective and helpful if the mentality of the society changes towards the women from vulnerable society to immune society. Most important that the society should encourage and support instead of pulling back they must push them to come up and contribute to strengthen the economy of the country and also inspire other women to participate more and more by setting an example. In fact women can be used as the most powerful weapon if they are given a fair opportunity rather than being exploited. It is truly said by Swami Vivekananda, "The best thermometer to the progress of a nation is its treatment of its women".