



## **Sexual Harassment of Women at Work Place in India: -**

### **The Legal Perspective**

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### **Abstract**

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There is no denying the fact that women in India have made a considerable progress in almost seven decades of Independence, but they still have to struggle against many handicaps and social evils in the male-dominated society. With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. The paper highlights the present laws regarding sexual harassment at workplace in India. The constitution of India safeguards the women's right to equality, life and liberty, further many legislative changes were made for the protection of women from sexual harassment, but these changes are not enough to provide the safe environment to women at Workplace or at any other place. It becomes essential to introduced strict or corporeal punishment to the accused of the outraging and insulting the modesty of a woman and for the incidents of rape and also to protect the women from sexual harassment.

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## **Sexual Harassment of Women at Work Place in India: - The Legal Perspective**

Swami Vivekananda, quoted that, *“There is no chance for the welfare of the world unless the condition of women is improved, It is not possible for a bird to fly on only one wing.”*

### **Introduction**

There is no denying the fact that women in India have made a considerable progress in almost seven decades of Independence, but they still have to struggle against many handicaps and social evils in the male-dominated society. Many evil and masculine forces still prevail in the modern Indian society that resists the forward march of women. It is ironical that a country, which has recently acclaimed the status of the first Asian country to accomplish its Mars mission in maiden attempt, is positioned at 129th rank among 146 countries across the globe on the basis of Gender Inequality Index.

With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. Sexual harassment at a workplace is considered violation of women’s right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women’s participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. The law is very strict regarding this matter, but still the conditions do not improve. This is indeed a matter of consideration. The paper highlights the present laws regarding sexual harassment at workplace in India.

### **Definition Sexual Harassment at Work Place**

According to European Commission, Sexual Harassment means, the unwelcome, unreasonable and offensive nature of the conduct, and includes conduct that is hostile, intimidating or humiliating to the recipient.

The Equal Employment Opportunity Commission (EEOC) of United States which oversees the enforcement of title has defined that “Unwelcome sexual advances, requests for several favours, and other verbal and physical conduct of a sexual nature constitute sexual harassment.”

As per the Australian Human Rights and Equal Employment Opportunity Commission, “Sexual Harassment is an unwelcome conduct, such as sexual advances and requests for sexual favours, when a reasonable person would feel offended, humiliated or intimidated by the conduct.”

The Convention on Elimination of Discrimination against Women further says that Sexual Harassment includes such unwelcome sexually determined behavior as physical contacts 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 grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion or when it creates a hostile working environment.

The ILO (International Labour Organization) definition of ‘Sexual Harassment’ is a clear form of gender discrimination based on sex, a manifestation of unequal power relations between men and women.”

As defined in the Supreme Court guidelines (Vishakha vs. State of Rajasthan, August 1997), sexual harassment includes such unwelcome sexually determined behavior as:

- Physical contact
- A demand or request for sexual favours
- Sexually colored remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example, leering, telling dirty jokes, making sexual remarks about a person's body, etc

Thus, these are some of the legal definitions of Sexual harassment of Women at workplace, which defines the ‘Sexual Harassment’ is basically the violation of human rights and the dignity of a woman.

### **Constitutional Provisions and Sexual Harassment at Workplace**

The framers of the Indian Constitution were well aware of unequal treatment to the fairer sex, from time to time immemorial. In India, the history of suppression of women is very old and long which is responsible for including for general and special provisions for upliftment and development of the status of women. Following are the rights by the constitution of India to secure women’s equality, life and liberty.

#### **Article 14 and 15**

Embodies the concept of equality and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth or any of them.

#### **Article 19**

It gives fundamental right to all the citizens to practice any profession, or to carry out any occupation, trade or business. This right presupposes the availability of an enabling environment for women, which is equal, safe and secure in every aspect.

## Article 21

Right to life and personal liberty, includes the right to live with dignity and in case of women it means that they must be treated with due respect, decency and dignity at workplace.

## Laws Dealing with Sexual Harassment of Women at Workplace in India

In 1983, *the Criminal Law (Amendment) Act* was passed with a view to protect women from certain categories of Sexual exploitation.

*Section 294 of Indian Penal Code* covers the offence of doing of any obscene acts and singing, reciting or uttering any obscene songs in public place and provides punishment for doing so as three months imprisonment or with fine. This section has a very narrow application on sexual harassment and is primarily meant for checking eve-teasing. There are two Sections in the Indian Penal Code, which protects women against the sexual lust of men. One is *Section 376* which punishes the forcible ravishment of women, called rape, while *Section 354* punishes lesser acts of indecency such as solicitation for sexual intercourse, or the like.

Under Indian Penal Code, 1860 Except Section 354, *Section 354-A* is inserted under the head of Sexual Harassment. Now Sexual Harassment is an offence under Indian Penal Code for which prescribed punishment is rigorous imprisonment for a term of three years. This section was inserted in Indian Penal Code after the Nirbhaya Case (Delhi Gang Rape) for the protection of women from eve-teasing and sexual exploitation. It protects the women from sexual harassment, whether at 'workplace' or outside.

*Voyeurism* is also a form of Sexual Harassment punishable under *Information Technology Act 2000* because it is an offence by the means of camera and mobile phones. Voyeurism is an act of watching, or capturing the image of a woman engaging in a private act. *Section 354-C IPC* specifically provides punishment for Voyeurism. Thus after the Criminal Law (Amendment) act 2013, *Sections 354-A, 354-B, 354-C and 354-D provides* the protection to women from sexual harassment at workplace or outside the workplace. It also includes the sexual harassment by the means of Internet, email and by the use of computer technology.

*The Criminal Procedure Code, 1973* provides certain provisions for the protection of women from sexual harassment, so that a woman cannot be sexually harassed by the police officers, who are engaged in the duty of making arrest, search and taking the statement of the witnesses in the due process of the law for this purpose Criminal Law (Amendment) Act

2008, Criminal Law (Amendment) Act 2010 and Criminal Law (Amendment) Act 2013 plays a very important role. For the purpose of avoiding the sexual harassment by the police officer, special provisions for the arrest of a woman has been made under the Criminal Procedure Code. Where a woman is to be arrested, she could be touched only by the female police officer, and for making an arrest of a woman after sunset and before sunrise, the woman police officer shall obtain the prior permission in writing of the Judicial Magistrate of the first Class. Similarly, where there is a need of a search of a woman who is reasonably be suspected of concealing about her person any article for which search should be made, then the search of that woman should be made by another woman with strict regard to decency. A woman cannot be called to a police station for the purpose of recording her statement. Police officer has to visit her residence for recording her statement.

The offences under *Section 376, Section 376A, Section 376B, Section 376C, Section 376D and Section 376E of the Indian Penal Code, 1860* shall be tried as far as possible by a Court presided over by a women, as per new proviso inserted under *Section 26 of CrPC*, taking into account the sensitivity of the case and degree of understanding that a woman may exhibit in these cases. Taking into account the fear element and insecurity in a woman below the age of eighteen years who has been subjected to rape or other sexual offence in giving evidence, the same shall be recorded in the absence of the accused while at the same time ensuring the right of cross-examination of the accused, as stated after the amendment of *Section 273 of CrPC*.

**Indian Evidence Act:-** There has been few changes under Indian Evidence Act, brought by Criminal Law Amendment Act, 2013 for the protection of women. Non-inclusion of the character of the victim or any of her previous sexual experience with any person in considering the issue of consent by the victim in a prosecution for offence under *Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E of the Indian Penal Code, 1860*, quashes the means adopted by the accused for trying to escape liability on these grounds. In addition, during the cross examination of the victim, it shall not be permissible to adduce evidence or to put questions as to general immoral character, or previous sexual experience with any other person for proving such consent or the quality of consent. This may even ensure that a victim may not be subjected to repeated mental torture and embarrassment for being inflicted upon such heinous offence.

*The National Commission for Women Act, 1990*, was passed. The Protection of **Human Rights Act, 1993** also provides the protection to the women from sexual harassment at workplace.

**Recommendations of the National Commission for Women (NCW) on safety of women in and around college and university campuses.**

Recommendations that emerged out of the meeting convened by the National Commission for Women with the Principal Secretary (Home), Delhi Police Commission and heads of educational institutions regarding strategies to prevent the occurrence of rape and sexual harassment in and around campuses, are as follows:

**Police**

- More PCR vans should be deployed to patrol educational institutions.
- Along the lines of women's helplines, college helplines should also be provided and its number should be prominently displayed.
- There should be police patrols around educational institutions at least for two hours before and after college gets over.
- There is a need to improve relationships between the police and educational institutions.
- Every case of rape must be handled by a woman police officer.
- The attitude of the police needs to be made more positive towards the victim.

**Educational Institutions**

- Educational institutions must ensure proper lighting in an around their premises, as darkness is conducive to crime. The height of hedges must be reduced in campuses for proper visibility.
- An internal security committee should be constituted by all educational institutions, headed by the head of the institution, police officer and student representatives who must be invited for meetings to review the security arrangements. If the need arises, other government departments like the PWD, MCD, etc, may be invited to review the security arrangements.
- The internal security committee should have monthly or bi-monthly meetings and must maintain the minutes of the meeting.
- Experts should be invited to inspect the college area to assess the security needs and arrangements on campus.

- Educational institutions must perform their administrative role for the security of the students.
- Students must be given proper training in self-defence.
- The telephone numbers of women's helplines must be provided.
- Entry into educational institutions must be restricted. Entry should be through identity cards.
- Construction workers should not be allowed to stay on the premises of the institute overnight.
- Safety gadgets should be provided in hostels.
- Educational institutions could engage retired police officers on their security committees/boards.
- De-politicisation of the campus is a must; institutions must ensure this.
- Awareness programmes on the safety and security of students must be conducted on a regular basis.

### **Media**

- There is a need to sensitise the media regarding the repeated relay of incidents relating to violence against women. This has negative repercussions on society, especially on children.
- The National Commission for Women directs the media not to intrude on the privacy of the victim.

The ‘Sexual Harassment of Women (Protection, Prohibition and Redressal Act, 2013 was passed taking in view and the protection of human rights and the dignity of women. Even, Immoral Traffic (Prevention) Act, 1956 provides the punishment for the sexual exploitation and harassment of women. If a girl or woman forcibly keeping in the work of prostitution or flesh market by any person, such person can be punished under Immoral Traffic (Prevention) Act 1956.

### **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:**

Actually, it was the case of Medha Kotwal Lele and Ors. vs. Union of India (Writ Petition (Criminal) Nos. 173-177), which led to the making of the Act. In this judgment, the Hon’ble Supreme Court highlighted the non-compliance and non - adherence to the Vishaka guidelines in workplaces in India and urged the need for legislative enactment in this

direction. The main objective of the passing of Act was that with more and more women are joining workforce, so as to ensure safe, secure and enabling environment to every women, irrespective of her age, or employment status, free from all forms of sexual harassment by fixing the responsibility on the employer is the objective of the Act.

To ensure that the protections contemplated under the Sexual Harassment Act do not get misused, provisions for action against “false or malicious’ complaints have been made. The Sexual harassment Act provides that if the Internal complaints Committee or the Local Complaint Committee concludes that the allegations made was false, malicious, the complaint was made knowing it to be untrue or forged or misleading has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation may be taken against such complainant.

### **Conclusion**

Some noteworthy complaints of sexual harassment of women at workplace that came into the national limelight were filed by (i) Rupan Deo Bajaj, an IAS officer in Chandigarh, against 'super cop' K P S Gill, (ii) An activist from the All India Democratic Women's Association, against the environment minister in Dehra Dun, (iii) An airhostess against her colleague Mahesh Kumar Lala, in Mumbai and (iv) An IAS officer in Thiruvananthapuram, against the state minister. Even though the constitution of India safeguards the women’s right to equality, life and liberty, further many legislative changes were made for the protection of women from sexual harassment, but these changes are not enough to provide the safe environment to women at Workplace or at any other place. It becomes essential to introduced strict or corporeal punishment to the accused of the outraging and insulting the modesty of a woman and for the incidents of rape and also to protect the women from sexual harassment.



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