

## “Critical Analysis of Sexual Harassment at Workplace in India”

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### **Abstract**

This article explores sexual harassment law in India critically, highlighting how it violates women's rights to equality under Articles 14 and 15, as well as their right to live in dignity under Article 21 of the Indian Constitution. It underlines the importance of the Vishaka recommendations, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, and India's adherence to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In order to guarantee the proper application of the legislation and the successful resolution of sexual harassment cases, the document emphasizes the significance of joint cooperation and commitment from all stakeholders.

### **Introduction**

A major worldwide problem that affects both developed and developing countries is sexual harassment in the workplace. It cuts over geographical, social, economic, traditional, and spiritual barriers. Derogatory language is often used in this situation, which compromises the core ideas of gender equality, human rights, and human dignity. The intricacy of this phenomena stems from its relationship to societal standards established by skewed gender views, as well as how women are seen and behaved. Industrialization, globalization, and advancement in a number of disciplines are all factors in India's changing position of women. But as women have become more prevalent in the workforce and have seen an increase in abuse and harassment, this improvement has also occurred. Despite its widespread occurrence, sexual harassment incidents are vastly underreported. This is a result of women's worries about possible harm to their reputations on a personal and professional level, as well as related societal stigma and dangers to their livelihoods.<sup>1</sup>

### **What is Sexual Harassment?**

Sexual harassment refers to “unsolicited sexual propositions, demands for sexual favors, and other types of verbal or physical behavior of a sexual nature that lead to a hostile or uncomfortable work or academic atmosphere.”

The importance of this issue is growing, therefore “The Criminal Law (Amendment) Act of 2013” brought about an amendment to the Indian Penal Code, which introduced Section

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<sup>1</sup> “*Status of women in India*, TOI (May 29, 2023), <https://timesofindia.indiatimes.com/readersblog/lawpedia/status-of-women-in-india-51422/>.

354A. This particular section outlines the precise behaviors that qualify as sexual harassment and are therefore deemed to be criminal offenses. Sexual harassment is a term that encompasses a range of behaviors, including physical contact that is unwelcome and advances that are explicit in nature. It can also refer to situations where individuals are coerced into providing sexual favors or where pornography is displayed without consent.<sup>2</sup> Additionally, sexually suggestive comments may also be considered a form of sexual harassment.

Previously, the Indian Penal Code did not possess any comparable legal provisions that could have been utilized. The Indian Penal Code is composed of three separate sections, specifically Section. To target particular categories of offenses, the subsequent regulations were specifically devised: S 94, 354, and 509. The laws in question are defined as violations that include either public acts of indecency or actions that are considered to violate the dignity of women. The ultimate two clauses of Section 294 in the Indian Penal Code demonstrate gender specificity and address the needs of women, notwithstanding the gender-neutral character of the aforementioned section.

### **International policies and protocols**

1. **“The Declaration on the Elimination of Violence Against Women<sup>3</sup> was established by the United Nations General Assembly Resolution 48/104.”** This declaration recognizes sexual harassment as a form of violence against women. Article 2(b) encompasses a broad range of contexts, including but not limited to professional and academic settings, in which the proscribed conduct is prohibited. Article 4(d-f) of the resolution stipulates the enforcement of policies designed to forestall and tackle cases of violence against women. This may necessitate the application of legal measures such as criminal, civil, or administrative penalties.
2. In accordance with the **“Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>4</sup>”,** it is incumbent upon States Parties to implement appropriate measures to eradicate discrimination against women across various domains, including but not limited to employment, legal equality, administration and politics, governance, education, healthcare, and other facets of public and social life. (Arts. 7-16).
3. **“Paragraph 178 of the Beijing Platform for Action<sup>5</sup>”** recognizes sexual harassment as a form of discrimination and a manifestation of violence against women. This is a

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<sup>2</sup> “The Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013.”

<sup>3</sup> “*Declaration on the Elimination of Violence against Women*, UN (June 01, 2023), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>”

<sup>4</sup> “*Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth*, UN WOMEN (June 01, 2023), <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth#:~:text=The%20Convention%20on%20the%20Elimination,women's%20and%20girls'%20equal%20rights.>”

<sup>5</sup> “*Beijing Declaration and Platform for Action*, UN (June 02, 2023), <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.”

significant observation worth emphasizing. The text espouses the notion that multiple stakeholders should take action by promoting the adoption and strengthening of legal frameworks that prohibit sexual harassment. Additionally, it urges employers to institute policies and strategies that are geared towards preventing instances of harassment. The parties mentioned above consist of the government, employers, labor unions, and civil society.

4. According to the “**ILO Committee of Experts on the Application of Conventions and Recommendations**”<sup>6</sup>, sexual harassment is categorized as a type of sex discrimination that is encompassed within the scope of the “Discrimination (Employment and Occupation) Convention (No. 111) of 1958.” Convention No. 169 of the International Labour Organization, which pertains to the rights of Indigenous and Tribal Peoples, contains a provision that expressly forbids sexual harassment within the confines of the workplace.
5. The female gender is significantly impacted by various provisions of the “**International Covenant on Economic, Social, and Cultural Rights**”<sup>7</sup>. Article seven recognizes the entitlement of women to fair labor conditions and prohibits sexual harassment in the workplace due to its potential negative impact on the work environment.

### **Constitutional Safeguards**

The Indian Constitution's Article 19(1)(g) provides assurance of the entitlement of each person to participate in any profession, occupation, trade, or business. The Constitution provides protection for the ability of women to participate in employment within the public service sector. Sexual harassment poses a significant obstacle for women in their pursuit of career opportunities, as it exerts undue pressure on them to abstain from such pursuits. The prevalence of sexual harassment directed towards women in professional settings presents a substantial hazard to their well-being and creates a notable disparity between them and their male colleagues. The magnitude of the effect on their ability to exercise their rights, as outlined in Article 19(1)(g) of the Constitution, is significant.

In accordance with the stipulations outlined in Article 21, the act of engaging in sexual harassment towards female employees within the confines of the workplace is considered to be a violation of their inherent rights to personal autonomy and the preservation of life. According to the article, it is crucial that no person is denied their right to life or personal freedom.<sup>8</sup> Sexual harassment is a violation of an individual's right to access the resources required for survival, which is a crucial aspect of the right to exist. In accordance with the stipulations outlined in Article 21 of the Constitution, it is prescribed that each woman is

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<sup>6</sup> “Committee of Experts on the Application of Conventions and Recommendations, ILO (June 03, 2023), <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>”

<sup>7</sup> “International Covenant on Economic, Social and Cultural Rights, UN (June 03, 2023), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>”

<sup>8</sup> “Narendra Kumar v. State of Haryana, JT, (1994) 2 SCC 94”

entitled to liberty from discriminatory practices and obstacles based on her gender, thereby facilitating her ability to lead a satisfying existence. The realization of the "Right to Work" requires a stable and safe working atmosphere, as well as the privilege to live a life marked by dignity and respect. Therefore, it is crucial to eliminate the risks linked with sexual harassment to ensure the genuine realization of these entitlements.

The preamble of the Indian Constitution guarantees "Equality of status and opportunity" to all its inhabitants. The prevalence of sexual harassment poses a threat to the core objective of the Constitution's framers. Non-recognition of a woman's right to privacy leads to the deprivation of her right to protection of life and liberty, which is ensured by Article 21 of the Indian Constitution. This results in the constitutional principle of gender equality being stripped of its significance.

Sexual harassment of women in the workplace constitutes a blatant infringement of their fundamental entitlement to secure employment with dignity, as well as their inherent sense of self-esteem. Thus, this action represents a breach of their basic entitlements, encompassing their fundamental rights as human beings.<sup>9</sup>

### **Development of Indian legislation concerning Sexual Harassment.**

The Vishaka Decision is a significant judicial pronouncement by the apex court of India that laid down a set of directives to avert sexual harassment occurrences in professional settings.

The *Vishaka & Ors v. State Of Rajasthan & Ors*<sup>10</sup> case witnessed a landmark verdict by the SC, which acknowledged the issue of workplace sexual harassment in the country for the first time. The Vishaka group, in conjunction with other women's organizations, filed a "Public Interest Litigation against the State of Rajasthan and the Union of India in order to protect the fundamental rights of women in the labor force. The procedure was executed in conformity with the regulations specified in Sections 14, 19, and 21 of the Constitution of India."

The petition was instigated in response to a troubling incident wherein Bhanwari Devi, a social activist from Rajasthan, was subjected to a collective sexual assault<sup>11</sup> following her intervention in thwarting an underage marriage. The principles of equality and dignity are the foundation of actionable directives found in both the CEDAW and the Indian Constitution. The guidelines were established through the following process:

Employers and individuals in authority are barred from sexual harassment. It takes great care to establish appropriate sexual harassment policies and adhere to them. Physical, verbal, or nonverbal sexual harassment are all possible. Unwelcome sexual advances and physical contact are examples of this behavior, as are requests or pleadings for sexual favors, utterances that are sexually suggestive, the display of pornographic material, and other similar actions.

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<sup>9</sup> "Mohini Jain v State of Karnataka, AIR 1992 SC 1858."

<sup>10</sup> AIR 1997 SC 3011.

<sup>11</sup> Alice Montgomery, Sexual Harassment in the Workplace: A Practitioner's Guide to Tort Actions, August, 2010, Golden Gate University Law Review, Vol. 10, No. 3 (879-928).

Managers and employers in both public and private businesses should develop anti-sexual harassment policies. Take these actions to fully fulfill this pledge. Effective communication, promotion, and dissemination of the idea of workplace sexual harassment are necessary to stop this conduct. Regulations for the public sector and the government should prohibit sexual harassment. For those who break the rules, appropriate sanctions must be provided.

Private businesses should include the following restrictions into their policies, according to the Industrial Employment (Standing Rules) Act of 1946. Employers are required to offer work, leisure, health, and hygiene conditions to prevent a hostile work environment for women. It's crucial to prevent gender discrimination in the workplace.

The employer is required to file a complaint with the appropriate regulatory agency if the behavior is illegal under the Indian Penal Code or other laws. It is crucial to prevent prejudice or persecution of sexual harassment reports or witnesses.

The employer is required to take disciplinary action in line with the relevant regulations if the aforementioned behavior amounts to workplace misconduct. Regardless of whether the action satisfies criminal or service etiquette norms, the employer must provide an efficient grievance system to address the harmed party's concerns. Any grievance procedure has a deadline for resolving issues.

To guarantee that the complaint filing procedure, as mentioned in point (6), preserves confidentiality, a complaints committee, a qualified counselor, or other support services are necessary. The Complaints Committee need to have a female chair and at least 50% female members. The Complaints Committee should include a third party, such as a non-governmental organization or a sexual harassment expert group, to prevent manipulation by influential persons.

It is vital that the Complaints Committee submits an annual report to the appropriate government department outlining the different types of complaints and remedial actions. Employers and executives are required to inform the appropriate government agency of their compliance with the aforementioned regulations and the Complaints Committee's conclusions. It is advised that employees bring up concerns about sexual harassment in staff meetings or in other appropriate places. Discussions between the employer and the employee should include these topics. Raise awareness of the rights of women employees. It is possible to do this by making rules and regulations explicit.

Sexual harassment brought on by outside parties must be supported and stopped by the employer and other authority figures. To make sure that private sector employers uphold this pledge, the Central and State Governments should think about enacting laws or taking other actions.

### **Progress made after the Vishaka case**

The first legal case brought before the SC following the Vishaka ruling pertained to the “*Apparel Export Promotion Council v. A.K.*”<sup>12</sup> case. The legal tenets that were instituted in the Vishaka Judgment were affirmed by the Supreme Court in the Chopra case, numbered 132. The approval was granted for the termination of a high-ranking personnel affiliated with the Delhi division of the Apparel Export Promotion Council. The person in question was found guilty of participating in harassing conduct towards a female subordinate while she was under his management.

The case of “*Medha Kotwal Lele & Ors v. Union of India & Ors*”<sup>13</sup> acknowledged and took on the duty of overseeing the Vishaka Guidelines' application throughout the nation. State governments were asked to provide affidavits detailing their Vishaka Guidelines compliance. The directive's weakness necessitated States' structures to ensure the Vishaka Guidelines' successful implementation. In the end, the Supreme Court allowed individuals or groups to sue their High Courts for injury caused by noncompliance or disrespect for the Guidelines. The Vishaka verdict's complaint-resolution committee must be recognized as an investigative body under the Central Civil Rules of 1964 to comply with the top court's order. The guidelines state that the complaints committee's report is an investigative report. According to the instruction, the “Central Government's Department of Personnel and Training has changed sub-rule (2) of Rule 14 in the Central Civil Services (Classification, Control and Appeal) Rules of 1965. The clause was added after the above operation.” To effectively manage sexual harassment in the workplace, it is necessary to regularly spread information and raise awareness and perform evaluations. The above activities teach people about different sorts of sexual harassment to help them avoid it. A handbook and better training programs may help manage and avoid workplace sexual harassment.

### **Analysis**

Despite existing legal structures and controls, the frequency of this issue is still disturbingly high. The inadequate implementation and enforcement of current laws and regulations is one of the main criticisms. Employers often lack understanding and empathy, which prevents them from fostering a supportive and safe work environment. The underreporting of instances is a different point of contention. Victims are discouraged from coming forward and demanding justice because of fear of vengeance, victim-blaming, and societal shame. This underreporting not only prevents the victims from receiving justice, but it also maintains a climate of silence and impunity.

Patriarchal norms and gender prejudice contribute negatively to the persistence of sexual harassment. These social beliefs foster a climate in which harassment is accepted or even encouraged, further persecuting people and impeding the advancement of gender equality. Improved accountability and redressal processes are also required. Accessing a fair and

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<sup>12</sup> AIR 1999 SC 625.

<sup>13</sup> (2013) 1 SCC 297

timely grievance redressal procedure is difficult for many victims. Victims experience disenchantment and discouragement due to a lack of adequate structures and supports.

The primary emphasis of conversation and preventative actions continues to be on women as victims, ignoring the need for a comprehensive strategy that tackles the underlying causes, informs all workers, and holds offenders responsible.

### **Conclusion**

India's growth is benefiting from women's increased labor force participation. Women's core human rights depend on acknowledging the right to protection against sexual harassment. This effort advances women's autonomy, equitable access to opportunities, and ability to work in respectable fields. Workplace sexual harassment is a major social problem that needs immediate response. It is important to educate employers and workers about the many forms of sexual harassment that may occur in the workplace and the preventative measures and legal processes in place to stop it. Methodical and persistent efforts to spread information and raise awareness, together with periodic evaluations, may enhance workplace sexual harassment management. The above activities teach people about different sorts of sexual harassment to help them avoid it. A handbook and better training programs may help manage and avoid workplace sexual harassment.