
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CRITICAL EVALUATION OF THE SEXUAL HARASSMENT OF
WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013**- Aayushi Sharma¹**Abstract**

Sexual harassment is an offensive act that involves subjecting someone to physical or mental sexual abuse. Unfortunately, this issue has deep roots in Indian society, dating back to the time of emperors when women were treated as possessions and subjected to various forms of mistreatment and exploitation. Despite societal evolution, the problem of harassment persists. This paper takes a critical look at sexual harassment laws in India, shedding light on how they infringe upon women's rights to equality, as guaranteed by Articles 14 and 15 of the Indian Constitution, as well as their right to live with dignity, as outlined in Article 21. It also underscores the importance of the Vishaka recommendations, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013, and India's commitment to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). To ensure effective implementation of these laws and successful resolution of sexual harassment cases, the document emphasizes the need for collaborative efforts and dedication from all stakeholders involved.

Keywords: *Sexual Harassment, Human Rights, Indian Constitution, Workplace Act of 2013*

Introduction

Sexual harassment in the workplace is a significant global issue affecting both developed and developing countries alike. It surpasses geographical, social, economic, traditional, and

¹ Research Scholar, Centre for Human Rights and Duties, Panjab University, Chandigarh

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spiritual boundaries. A troubling aspect of this problem is the use of derogatory language, which undermines the principles of gender equality, human rights, and human dignity. The complexity of this matter arises from its association with societal norms influenced by biased gender perspectives and how women are perceived and treated.

India, in particular, has witnessed changes in the status of women due to industrialization, globalization, and progress in various fields. While women have made strides in the workforce, unfortunately, there has also been a rise in incidents of abuse and harassment. Regrettably, such occurrences of sexual harassment are grossly underreported. This is primarily because women fear potential damage to their personal and professional reputations, as well as societal stigma and threats to their livelihoods. As a result, the true scale of the problem remains obscured.

Review of Literature

*Arundhati Bhattacharyya (2017)*² – According to this paper, the Indian bureaucracy plays a crucial role in maintaining the effective functioning of a democratic nation, a legacy inherited from the Indian Civil Service during British colonial rule. Although sexual harassment in workplaces is a harsh reality, there is a lack of comprehensive studies on this issue. This study aims to bridge this research gap by examining the socio-economic factors contributing to sexual harassment within the Indian bureaucracy in Kolkata, Delhi, and Bengaluru.

*Nidhi Bothra (2014)*³ -Sexual harassment in the workplace is a prevalent crime against women in India, and it is also considered unconstitutional as it violates their fundamental rights. Although some women do speak up against such injustice, these cases often fade away over time. To address and prevent such misconduct appropriately, the Sexual Harassment Act of 2013 was implemented. This paper aims to provide a clear explanation of the scope of the Act and how organizations should take action to protect and uphold the dignity of women.

Research Objective

The following are the objectives of this paper -

² Bhattacharyya A. (2017). *Sexual Harassment in the Indian Bureaucracy: Violation of Human Rights*. Cambridge Scholars Publishing.

³ Bothra N. (2014). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. SSRN.

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- To critically evaluate the compatibility of the Sexual Harassment of Women at Workplace Act, 2013, with the constitutional rights of Indian women, specifically focusing on Articles 14, 15, and 21.
- To examining the effectiveness of the Vishaka recommendations and the Sexual Harassment at Workplace Act, 2013, in combating sexual harassment.

Research Methodology

In this research paper, a Doctrinal research approach will be adopted to evaluate the existing sexual harassment laws, pinpointing their strengths and shortcomings. By shedding light on the current state of the legal framework, this research aims to contribute to the ongoing discourse surrounding sexual harassment and pave the way for further improvements in protecting the rights and dignity of women in the workplace and beyond.

Constitutional Safeguard as to Sexual Harassment

Article 19(1)(g) of the Indian Constitution ensures that every individual has the right to engage in any profession, occupation, trade, or business of their choice. Additionally, the Constitution safeguards the inclusion of women in the public service sector. Unfortunately, the issue of sexual harassment poses a significant barrier for women pursuing their careers, pressuring them to reconsider their aspirations. This prevalent problem within professional environments jeopardizes the well-being of women and creates an evident imbalance between them and their male counterparts. Consequently, it hampers their ability to fully exercise their rights granted by Article 19(1)(g) of the Constitution.

As per the guidelines stated in Article 21, any form of sexual harassment directed at female employees while they are at work is seen as a clear infringement upon their fundamental rights to personal freedom and the protection of their well-being. The article emphasizes the importance of ensuring that every individual's right to life and personal liberty is upheld and not denied.⁴

Sexual harassment of women in the workplace is a clear violation of their fundamental right to work in a safe and dignified environment, and it deeply affects their sense of self-worth.

⁴ Narendra Kumar v. State of Haryana, JT, (1994) 2 SCC 94.

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This behaviour disregards their basic entitlements as human beings and undermines their inherent rights.⁵

International Policies and Protocols

The United Nations General Assembly Resolution 48/104 set forth the Declaration on the Elimination of Violence Against Women. Within this declaration, the significance of sexual harassment as a form of violence against women is duly acknowledged.⁶ Article 2(b) of the declaration comprehensively encompasses various scenarios, including professional and academic contexts, wherein such inappropriate behaviour is strictly prohibited. To address and prevent instances of violence against women, Article 4(d-f) of the resolution emphasizes the implementation of policies aimed at proactive measures. These policies are designed to effectively combat and deter any form of violence against women. To achieve this, the resolution advocates the utilization of legal actions, which may involve criminal, civil, or administrative penalties as appropriate measures.

As per the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), it is the responsibility of States Parties to take necessary actions to eliminate discrimination against women in different areas, such as employment, legal rights, government and politics, education, healthcare, and other aspects of public and social life.⁷

As per the findings of the ILO Committee of Experts on the Application of Conventions and Recommendations, sexual harassment is considered a form of sex discrimination falling under the purview of the Discrimination (Employment and Occupation) Convention (No. 111) of 1958. Additionally, Convention No. 169 of the International Labour Organization, which focuses on safeguarding the rights of Indigenous and Tribal Peoples, explicitly prohibits any instances of sexual harassment occurring within the workplace.⁸

Development of Indian Legislation concerning Sexual Harassment

⁵ Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.”

⁶ *Declaration on the Elimination of Violence against Women*. OHCHR. Retrieved July 27, 2023, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

⁷ *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth*. (2016). UN Women. Retrieved July 27, 2023, from <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth>.

⁸ *Committee of Experts on the Application of Conventions and Recommendations*. International Labour Organization (ILO). Retrieved July 27, 2023, from <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>.

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The Vishaka Ruling holds great importance as a key judicial statement made by India's highest court. It introduced a series of guidelines aimed at preventing incidents of sexual harassment in workplaces.

The case of *Vishaka & Ors v. State of Rajasthan & Ors.*⁹ marked a significant milestone as the Supreme Court delivered a groundbreaking judgment that recognized the problem of workplace sexual harassment in the country. The Vishaka group, along with various women's organizations, took the initiative to file a Public Interest Litigation against the State of Rajasthan and the Union of India with the primary aim of safeguarding the fundamental rights of women in the labour force. This legal action was conducted in accordance with the provisions laid out in Sections 14, 19, and 21 of the Constitution of India.¹⁰

The petition arose after a distressing event where Bhanwari Devi, a social activist from Rajasthan, faced a horrific sexual assault as a result of her intervention to stop an underage marriage.¹⁰ The principles of equality and dignity, which form the basis of actionable directives in both the CEDAW and the Indian Constitution, prompted the creation of these guidelines. The process of establishing these guidelines was as follows:

- Employers and people in positions of authority are strictly prohibited from engaging in sexual harassment. It is crucial to create well-defined sexual harassment policies and ensure their strict adherence. This may encompass various forms, such as physical, verbal, or nonverbal behaviour. Unwanted advances or physical contact, as well as any requests for sexual favours, sexually suggestive remarks, the display of explicit material, and similar actions, all fall under the umbrella of unacceptable behaviour. It is essential to foster a safe and respectful environment for everyone involved.
- Both public and private businesses should prioritize the development of anti-sexual harassment policies. To fulfil this commitment effectively, it is essential to communicate and promote the idea of preventing workplace sexual harassment. Regulations must be established in the public sector and government to explicitly prohibit such behaviour, with appropriate sanctions for those who violate these rules.
- Private businesses should incorporate specific restrictions into their policies, following the guidelines set forth in the Industrial Employment (Standing Rules) Act of 1946. Employers must ensure conducive work, leisure, health, and hygiene conditions to create a

⁹ *Vishaka & Ors v. State of Rajasthan & Ors.*, AIR 1997 SC 3011.

¹⁰ Pandey. (2017, March 17). *Bhanwari Devi: The rape that led to India's sexual harassment law*. BBC News. Retrieved July 27, 2023, from <https://www.bbc.com/news/world-asia-india-39265653>.

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safe and welcoming environment for women, thereby preventing any form of gender discrimination at the workplace.

- If any behaviour falls under the category of illegality according to the Indian Penal Code or other laws, the employer is required to report the incident to the appropriate regulatory agency. This is crucial to avoid any bias or mistreatment of individuals who report or witness incidents of sexual harassment.
- In cases where the aforementioned behavior amounts to workplace misconduct, the employer must take disciplinary action in line with relevant regulations. It is imperative for the employer to provide an efficient grievance system to address the concerns of the affected party, regardless of whether the actions align with criminal or service etiquette norms. Timely resolution of issues is essential in any grievance procedure.
- To maintain confidentiality during the complaint filing process as mentioned earlier, the establishment of a complaints committee, along with a qualified counselor or support services, is necessary. The committee should comprise at least 50% female members, with a female chairperson. To prevent any influence from powerful individuals, involving a third party, such as a non-governmental organization or a sexual harassment expert group, is recommended.
- The Complaints Committee should submit an annual report to the appropriate government department, outlining the various types of complaints received and the corresponding remedial actions taken. Employers and executives should inform the government agency about their compliance with the regulations and the conclusions of the Complaints Committee. Encouraging open discussions about sexual harassment in staff meetings and other appropriate forums will raise awareness of women employees' rights, and making rules and regulations explicit will reinforce this further.
- Employers and other authority figures must actively support and prevent sexual harassment brought on by external parties. To ensure private sector employers uphold this commitment, the Central and State Governments should consider enacting relevant laws or implementing other necessary actions.

Development Post Vishaka Case

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The initial legal case presented to the Supreme Court after the Vishaka ruling was centred around the case of *Apparel Export Promotion Council v. A.K.*¹¹ In this matter, the principles established in the Vishaka Judgment were upheld by the Supreme Court during the Chopra case. The Supreme Court granted permission to terminate a senior employee associated with the Delhi division of the Apparel Export Promotion Council. The individual in question was found guilty of engaging in harassing behaviour towards a female subordinate while she was under his supervision.

The case of *Medha Kotwal Lele & Ors v. Union of India & Ors.*¹² took on the responsibility of supervising the nationwide implementation of the Vishaka Guidelines. State governments were required to submit affidavits confirming their compliance with the Vishaka Guidelines. However, the directive had certain limitations, prompting the states to establish robust structures to ensure the effective implementation of the guidelines. Ultimately, the Supreme Court granted individuals or groups the right to approach their respective High Courts if they suffered harm due to noncompliance or disregard for the Guidelines.

To adhere to the court's order, the complaint-resolution committee established by the Vishaka verdict should be recognized as an investigative body under the Central Civil Rules of 1964. As per the guidelines, the committee's report serves as an investigative document. In light of this, the Central Government's Department of Personnel and Training has made an addition to sub-rule (2) of Rule 14 in the Central Civil Services (Classification, Control and Appeal) Rules of 1965 following the aforementioned procedure.

To effectively address sexual harassment in workplaces, it is crucial to regularly disseminate information, increase awareness, and conduct evaluations. These measures aim to educate people about various forms of sexual harassment, enabling them to prevent such incidents. The development of a handbook and enhanced training programs can contribute significantly to managing and preventing workplace sexual harassment.

Conclusion

India is experiencing economic growth due to an increase in women's participation in the labour force. Respecting women's fundamental human rights includes acknowledging their right to protection against sexual harassment. By doing so, we empower women, promote equal access to opportunities, and foster their participation in respectable professions.

¹¹ *Apparel Export Promotion Council v. A.K.*, AIR 1999 SC 625.

¹² *Medha Kotwal Lele & Ors v. Union of India & Ors.*, (2013) 1 SCC 297.

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Addressing workplace sexual harassment is a pressing social issue that requires immediate attention. Educating both employers and employees about the various forms of sexual harassment that can occur in the workplace, as well as the preventive measures and legal avenues available to combat it, is crucial. Systematic and persistent efforts to disseminate information and raise awareness, combined with regular evaluations, can contribute to more effective management of workplace sexual harassment. By educating people about different types of sexual harassment, we equip them with the knowledge to avoid such behaviours.

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