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**ARE WOMEN SAFE AT WORK PLACE? ADDRESSING WORKPLACE
HARASSMENT IN INDIA**- Sampath Rekha¹**ABSTRACT**

In an era of globalization, it is disheartening to see that the treatment of women has not evolved at a similar rate. Societal perceptions of women remain entrenched in stereotypes regarding acceptable behaviour, and the workplace is no exception to this prevailing mind set. This paper explores sexual harassment against women in the workplace as a serious form of gender discrimination and a violation of human rights, framed within the context of ILO discrimination. Sexual harassment is against the constitutional rights which is guaranteed in Articles 14 and 15 and 21 of the Indian Constitution that includes right to life and to live with respect. The roots of this issue can be traced back to the Banwari Devi case, and the landmark judgment in Vishaka vs. Union of India in 1997 is also examined, where the Supreme Court issued guidelines aimed at preventing sexual harassment in the workplace and a special law was enacted on 2013 to address the issue of sexual harassment that women face in their workplaces. This article seeks to address the challenges faced by working women in their professional environments and the factors contributing to the low employment rate.

Keywords: *women, sexual violence, workplace, harassment, discrimination, acts, challenges.*

INTRODUCTION

In early days, Indian Women were engaged in household works and looked after their family. They were not allowed to go outside for earning income. . But in modern era women have come out of homes and established an identity of their own. At present women are contributing more for the development of the country. Employment gives economic status for women and thereby giving social status to them. In the era of globalization women are vulnerable to intense exploitation, they are exposed to more and more risks and; they are exposed to endure more and more stress and strain both physical and mental. Women have been facing sexual harassment at workplace across the world from centuries. Sexual harassment has

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been recognized as the most intimidating, degrading and worst form of violence. In the workplace it creates a hostile work environment and reinforces the perception of subjugation and suppression of women in all area of their life. It adversely affects the socio economic status of women empowerment. Sexual harassment is a serious manifestation of sex discrimination and violation of human rights. The Honourable Supreme Court initially recognized the need for such legislation in the case of Vishaka v State of Rajasthan². At that time, there was no existing law to address the serious issue of sexual harassment of women in the workplace. In response, the Hon'ble Supreme Court exercised its authority under Article 32 of the Constitution to issue guidelines for workplaces and organizations. The Supreme Court integrated fundamental human rights principles from the Constitution of India, specifically Articles 14, 15, 19(1) (g), and 21, along with the requirements of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the Government of India ratified in 1993. The Court's recommendations were recognized as law under Article 141 of the Indian Constitution.

Sexual harassment in the workplace violates fundamental rights of women, such as the right to equality and freedom. It creates an unpredictable and intimidating environment that discourages women from taking initiative, ultimately hindering their financial independence and overall development³

BACKGROUND OF SEXUAL HARASSMENT AT WORKPLACE IN INDIA

The history of sexual harassment can be traced in Banwari devi case. The following text is about Banwari devi, an inspiring woman who struggled for justice against sexual violence in Rajasthan. Her fight brought sexual harassment at the workplace to the fore for the first time in India.

Banwari devi, is a woman from kumhar caste. She is from the village of Bhatari, Rajasthan and worked as *asaathin*⁴ - an employee of women development project run by government of Rajasthan. A key responsibility of her role was to stop child marriages in her village. The practice of child marriage was rampant in Rajasthan, Banwari devi tried to prevent the child marriages. As a result of this, she was raped by the upper caste community. Though she was subjected to rape, the significant legal changes that happened as a result of her case were about sexual harassment Vishaka, a group of women's organizations in Rajasthan, they filed a PIL in the Supreme Court. They argued that this was a clear case of sexual violence at workplace that Banwari devi was raped in the course of her employment while her employer the Rajasthan government, did nothing to protect her from violence, nor support her in dealing with it;

²AIR 1997 SC 3011

³Sahu, A. (2018). Combatting Sexual Harassment of Women at Workplace. International Journal of Trend in Scientific Research and Development, Volume-2(Issue-3), 2239–2242. <https://doi.org/10.31142/ijtsrd12745>

⁴ <http://sathin.rajasthan.gov.in>.

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and that she, as an employee, should not be left to deal with the consequences all by herself. Bhanwari Devi's struggle, thankfully was not in vain. In 1997 the Supreme Court held that sexual harassment was a form of discrimination against women and that it was a violation of the constitutional right to equality. The court held that the employer has the responsibility of defending its employee and those who sexually harassed the employee. The court together put a set of guidelines to be followed by every employer with respect of its women employees in cases of sexual harassment⁵. This is how Vishaka Guidelines came to be enacted. The guidelines indicate that a committee should be established to address all complaints from the victim. Sadly, it was the horrific crime against Bhanwari Devi that drew significant attention from both the government and the judiciary. As noted in the judgment, there is a "lack of domestic law in this area," which necessitates the formulation of effective measures to combat the issue of sexual harassment faced by working women⁶

JUDICIARY PROTECTION ON SEXUAL HARASSMENT IN VISHAKA GUIDELINE

The Judgement was pronounced in a situation when till 1997, there was simply no legal recognition of sexual harassment. The Supreme Court has exhibited admirable judicial activism in filling the gap existing in Indian scenario by incorporating the definition of sexual harassment as contained in CEDAW.⁷The Supreme Court issued important guidelines to address the issue of sexual harassment in the workplace. In its ruling, the Court defined sexual harassment as "any unwelcome, sexually determined physical, verbal, or non-verbal conduct." This includes sexually motivated comments, requests for sexual favours, and the display of sexually offensive materials at work. The definition encompasses situations where a woman may find herself at a disadvantage due to threats related to employment decisions that could significantly impact her career⁸

These guidelines established a mechanism for addressing complaints of sexual harassment in the workplace.

Employers are required to ensure proper Redressal and Prevention of Sexual Harassment. All employers, whether in public or private sectors, must implement appropriate measures to prevent such harassment. They should provide suitable working conditions that promote health, hygiene, and leisure, ensuring a non-hostile environment.

⁵Vishaka and ors vs state of Rajasthan and others AIR 1997 SC 384 (<http://indiankanoon.org>)

⁶Sexual harassment at Workplace in India: Background and Legislative actions at www.gktoday.in

⁷General Recommendation 23 to Article 11 of UN convention on Elimination of All Forms Discrimination Against Women

⁸India's Law on Prevention of Sexual Harassment at the Workplace by Nithin Desai Associates 2018, pp. 14-16

If any conduct constitutes a violation under the Indian Penal Code or other laws, the employer must take appropriate action as per the legal provisions. Victims of sexual harassment should have the option to request a transfer or the transfer of the perpetrator.

These guidelines apply to employers and responsible individuals in institutions tasked with preventing sexual harassment and establishing procedures for resolving complaints. They cover women who receive regular salaries, work on an honorary basis, or volunteer in government, private, or organized sectors

The Supreme Court in the **Vishakha Judgment** included guidelines should be prominently displayed to raise awareness of women's rights in the workplace. Discussions about sexual harassment should take place in meetings with employees and other relevant forums. Employers should also support those affected by harassment from outsiders or third parties⁹.

Another important case is Apparel Export Promotion vs A.K.Chopra, in which the court looked into the concept of vicarious liability for employers concerning acts of sexual harassment committed by their employees. This case highlighted crucial issues related to the responsibility of employers to provide a safe and harassment-free work environment, particularly for women.¹⁰

In another significant case, the Supreme Court noted that even though the Vishaka guidelines were established, their implementation frequently fell short and lacked proper enforcement. The court acknowledged the necessity for clear directives to guarantee that the guidelines were effectively integrated into different rules and practices¹¹.

CONSTITUTIONAL PROTECTION OF SEXUAL HARASSMENT

The Constitution of India has played a crucial role in ensuring gender justice in the country, serving as the supreme law. The Preamble guarantees **Justice, Social, Economic, And Political Equality of Status, Opportunity, and Individual Dignity**. It recognises women as a class by itself and permits enactment of laws. Several articles in our constitution make express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation and also includes women must be treated with due respect, decency and dignity in workplace as stated in the

⁹Vishaka Guidelines www.en.wikipedia.org/wiki/Vishaka_Guidelines development, 2015

¹⁰<https://reflections.live/articles/11309/posh-act-the-case-of-apparel-export-promotion-council-vs-a-k-chopra-an-article-by-pari-chauhan-11482-lm20cw40.html>

¹¹ Medha Kotwal vs Union of India AIR 2012 SC 632

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Constitution of India¹². Although the Constitution guarantees every individual the right to pursue any occupation, trade, or business—including the right to a harassment-free environment¹³-many women still encounter different forms of sexual harassment at work on a daily basis

INTERNATIONAL PROTECTION ON SEXUAL HARASSMENT AT WORKPLACE

The Universal Declaration of Human Rights, adopted on 10 December 1948, set forth a comprehensive ban on discrimination of any kind, including discrimination based on sex. This declaration clearly states that everyone is entitled to equal rights regarding work, including the freedom to choose their employment, just and favourable working conditions, and protection against unemployment. Additionally, everyone has the right to equal pay for equal work. Those who are employed are entitled to fair and just compensation that ensures a dignified existence for themselves and their families, and this may be supplemented by other forms of social protection if needed. Everyone also has the right to form and join trade unions to safeguard their interests¹⁴

The international labour organisation has adopted number of conventions and recommendations for the elimination of sexual harassment in the workplace including convention no 190. The International Labour Organization's Convention 190, also known as the Violence and Harassment Convention, is the first international treaty to recognize the right to work free from violence and harassment. The convention was adopted in June 2019 and is intended to protect all workers, especially women in the informal economy and migrant workers¹⁵

Convention No. 190 and Recommendation No. 206 represent the first international labour standards aimed at establishing a common framework to prevent, address, and eliminate violence and harassment in the workplace, including gender-based violence and harassment. For the first time in international law, the Convention specifically acknowledges everyone's right to a work environment free from violence and harassment, and it outlines the obligation to respect, promote, and fulfill this right (Art. 4(1)).¹⁶

The International Labour Organization, a specialized agency of the UN, has consistently taken the lead in addressing the issue of sexual harassment. This commitment is evident through the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No.111) The Committee of Experts on the Application of Conventions and Recommendations presents various instances of sexual harassment

¹²Article 14, Art. 16, art 21 of Indian constitution

¹³Article 19(g) of Indian constitution

¹⁴Article 23 of universal declaration of human rights

¹⁵<https://www.ilo.org/topics-and-sectors/violence-and-harassment-world-work#:~:text=Adopted%20in%20June%202019%20ILO,gender%2Dbased%20violence%20and%20harassment>

¹⁶wcms_738114.pdf (<http://www.ilo.org>)

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occurring in the workplace. Notably, the ILO is the only international organization that has established a framework specifically aimed at protecting individuals from sexual harassment. The ILO's dedication is further reflected in various non-binding instruments, including the 1985 International Labour Conference resolution advocating for equal opportunity and treatment for both men and women in employment. Additionally, the conclusions from the 1989 ILO Meeting of Experts on Special Protective Measures for Women emphasize the importance of equality in opportunity and treatment. The 1992 Tripartite Symposium on Equality of Opportunity and Treatment for Men and Women in Employment in Industrialized Countries specifically addressed sexual harassment, while the 1991 International Labour Conference resolution called for the International Labour Office to create guidelines, training, and informational resources on critical issues affecting women workers, including workplace sexual harassment. These Conventions, Recommendations, and Resolutions adopted by the UN and the ILO over the years clearly demonstrate their awareness of the escalating issue of sexual harassment. Through these frameworks, they have provided member states with guidelines to effectively address and combat sexual harassment in the workplace.

In a 2022 survey, the International Labour Organisation reported that “More than one in five people (almost 23 percent) in employment have experienced violence and harassment at work, whether physical, psychological or sexual.” The report emphasised that sexual harassment posed challenges to economic interests. “Violence and harassment at work causes harm to individuals, families, businesses and societies. It affects people’s lives, dignity, health, and well-being. It also exacerbates inequality in societies and undermines business productivity.”¹⁷

LEGISLATIVE PROTECTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

After a long battle of Vishaka Judgement, the POSH act 2013 has been enacted by the Parliament on April, 2013. Section 2(n)¹⁸ of the act states what sexual harassment at workplace is. Section 3 of the Act states that no woman should face sexual harassment in any workplace. According to the law, situations involving an implied or explicit promise of favourable treatment in employment, threats of adverse treatment, threats regarding current or future employment, interference with work, or creating an

¹⁷THE INDIA FORUM (<https://www.theindiaforum.in/gender/justice-transformative-sexual-harassment-cases>).

¹⁸ Sec 2(n) of POSH ACT 2013 “includes any one or more of the following unwelcome acts or behaviour whether directly or by implication namely:-physical contact and advances; or a demand or request for sexual favours; or making sexually coloured remarks; or showing pornography; or any other unwelcome physical verbal or non-verbal conduct of sexual nature.”

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intimidating, offensive, or hostile work environment, as well as humiliating treatment that could impact a woman's health or safety, may constitute sexual harassment.

The Act aims to protect women from sexual harassment in all workplaces, whether public or private, organized or unorganized, regardless of their age or employment status. It also extends to students in schools and colleges, patients in hospitals, and women working in domestic settings. Furthermore, the definition of a workplace includes locations visited by employees during the course of their work.

The Act establishes a system for addressing complaints and provides protections against false or malicious allegations. It mandates that every employer set up an Internal Complaints Committee (ICC) at any office or branch with 10 or more employees. Additionally, the District Officer must form a Local Complaints Committee (LCC) at the district level, and if necessary, at the block level. Employers who do not comply with this requirement may face fines of up to Rs. 50,000. In line with the Supreme Court Guidelines, which call for timely handling of complaints, the Act outlines a more comprehensive process that requires the Committee to complete its proceedings within 90 days. The Committee is also expected to try to resolve the issue through conciliation if the aggrieved woman requests it, moving to a formal inquiry only if a resolution cannot be achieved. If the ICC or LCC determines that a complaint is malicious or false, they may suggest imposing a penalty on the complainant according to relevant service rules. However, an investigation must be conducted to confirm any malicious intent. Simply failing to prove a complaint does not lead to action under this rule. Employers who do not comply may face fines up to Rs. 50,000. If an employer has previously been convicted of an offense and commits the same offense again, they could face double the penalty imposed for the first conviction, and their business license may even be revoked. Overall, while the Act is a positive step forward in clarifying and enforcing sexual harassment laws in the country, it contains several vague provisions that could lead to interpretative challenges.

IMPACT OF SEXUAL HARRASMENT AT WORKPLACE

The impact of sexual harassment in the workplace is extensive and represents a violation of women's equal rights. It not only affects the individual but also has a direct influence on workplace productivity and societal development. In professional life it affects in decreased work performance, Increased absenteeism and loss of pay, loss of promotional opportunities being subjected to gossip and scrutiny at work, Objectification, Public sexualisation Defamation, the need to relocate Job and career consequences, Weakened support networks and in personal life Depression Anxiety and panic

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attacks
Traumatic stress
Insomnia
Feelings of shame, guilt, and self-blame
Difficulty concentrating
Headaches
Fatigue and loss of motivation
Personal difficulties with time management
Eating disorders (weight loss or gain)
Feelings of betrayal and violation
Anger or violence towards the perpetrator¹⁹.

PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE

To maintain a respectful workplace, here are some steps to consider and implement: Ensure that there is a policy clearly communicated to all employees, whether they are paid staff or volunteers. Provide information on both informal and formal channels available for workers to report or address incidents of sexual harassment.

Conduct orientation sessions on workplace sexual harassment for all employees in various organizations, establishments, or institutions. Establish a Complaints Committee that is well-trained and equipped to foster trust among employees. Motivate senior leaders, supervisors, or anyone who can influence employment decisions to act as role models. Involve both men and women in creating a culture that does not tolerate workplace sexual harassment. Legally, workplace sexual harassment is no longer just a moral issue. The Vishaka Guidelines elevated this concern by recognizing “each incident of sexual harassment” as a violation of the fundamental right to equality. This principle has been incorporated into the Act, which upholds women's rights to a workplace free from sexual harassment. Complaints Committees in all workplaces are now responsible for ensuring that this right is protected through a fair, informed, and accessible process for addressing complaints.

By prioritizing prevention and establishing a redress mechanism that includes 50 percent women, a female chair, and an external expert, India is creating an innovative approach to address the experiences of working women facing sexual harassment. If appropriate changes are made in both legislation and practice to align with global standards, this model could become a benchmark for best practices. To achieve this, workplaces in India must commit to promoting gender equality²⁰

CONCLUSION

Addressing sexual harassment of women in the workplace requires a strong commitment to creating a safe, inclusive, and respectful environment. Acknowledging its prevalence and impact is the first step toward effective action. Organizations must implement clear, zero-tolerance policies against sexual harassment, supported by robust mechanisms for reporting, investigating, and resolving complaints.

¹⁹<https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>.

²⁰<https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>-

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Regular training programs can help both employees and management recognize inappropriate behaviour, understand their rights and responsibilities, and foster a culture of respect and equality. It is essential to create safe and confidential channels for victims to report harassment without fear of retaliation. Beyond policies and procedures, organizations must work to build an inclusive culture where diversity is celebrated, and mutual respect is fundamental. By adopting these measures, workplaces can make significant progress toward eliminating sexual harassment, ensuring gender equality, and creating an environment where all employees can thrive free from fear or discrimination. While there are numerous legislations that protect the rights and privileges of women, ignorance and lack of awareness often hinder their proper enforcement. Judicial decisions rendered by Indian courts illustrate the active role of the judiciary in protecting women from exploitation, especially when legislation is inadequate due to enforcement challenges. Legislative and judicial initiatives have improved women's status in society. It is hoped that by the end of the century, women will be in a much better position socially, economically, and politically than they are today.

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