

# BURNISHED LAW JOURNAL

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## **SEXUAL HARASSMENT AT WORK PLACE: THEN AND NOW**

### **ABSTRACT**

The paper attempts to well scrutinize the impact of sexual harassment at workplace on the employees who has been victims of it. It is the burning issue in the entire globe today and it's gender neutral and it's like an epidemic whose roots are growing day by day. Sexual harassment is the proclamation of unwanted human behaviour and it isn't mere equitable intruding of regards, perfect to rules suitable to quit propinquity guaranteed by law. This paper provides a platform to debate as to what qualifies as a justifiable and non-justifiable behaviour at a workplace. It deals with what exactly is sexual harassment the root causes of it? And how effective is the laws made by the government to deal with the issue?

### **INTRODUCTION**

Anthony Marais once said "*Sexual harassment is using what Nature gave us to take what isn't ours. It's an act of violence not only against an individual, but the group-and it inevitably meets with the wrath of the groups.*"<sup>1</sup> These words stands very true today. Working environment sexual harassment takes a wide range of structures. It can emerge out of a colleague, a chief, client or in a customer, and extents from undesirable contacting, wrong remarks or jokes, or somebody promising you an advancement in return for sexual approval. Sexual harassment doesn't need to

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<sup>1</sup>Anthony Marais, *Sexual-Harassment Quotes*, Good Reads, <https://www.goodreads.com/quotes/tag/sexual-harassment>

be "sexual." It can likewise appear as through prodding, scary or hostile remarks dependent on generalizations (e.g., about how certain individuals "are" or should act), or tormenting somebody or a gathering of individual's dependency based on their sex, sex character (man, lady, trans, intersex, non-binary) or sexual direction (strange, straight, promiscuous, lesbian, gay, a biogenetic, pansexual, two-soul and so forth.) Sometimes lewd behaviour related to sex and something different, similar to race or ethnicity. For instance, a lady of shading may encounter provocation in the work environment uniquely in contrast to a white female collaborator. She might be the objective of harsh or unfriendly conduct in light of the blend of her sex and her race or ethnicity.

Sexual harassment has become a sensitive global issue. Each nation is confronting this issue today.<sup>2</sup> No female laborer is sheltered and the feeling that all is well with the world is deficient in them. There are sure improvements parents in law of numerous nations to shield ladies laborers from sexual harassment. Sexual harassment is established in social practices and is exacerbated by power relations at the work environment. Except if there is sufficient accentuation on refinement at the working environment, legitimate changes are not really prone to be fruitful. Rather than cobbling together councils at the court's mediation, a framework and a course of review should as of now be set up.

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When sexual harassment occurs, there is a long lasting negative and traumatic impact on individuals including psychological suffering, physical suffering and professional losses. Workers suffering from sexual harassment are most unlikely to be highly productive. The negative impacts do not stop at an injury to the one individual. It has a ripple and multiplier effect on the rest of the workers in the organization, impacting the workplace and bringing negative consequences such as compromised team work, economic loss, impaired productivity, and hindered development. For the society at large, sexual harassment impedes the achievement of equality between men and women as it condones sex discrimination and sexual violence, and has detrimental effects on the development of the country as a whole and the well-being of people. Therefore, preventing and addressing sexual harassment is upon the interest of society.

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<sup>2</sup> Shiu-Yik Au, *The Real Cost of Workplace Sexual Harassment to Businesses*, The Canadian Press, September 3, 2019, A1

## COMPARISON OF THE PAST AND THE PRESENT SCENARIO

Sexual Harassment at workplace has always been a pervasive problem for all the gender stereotype in the society throughout history and it wasn't recognized in the court of law as a gender based discrimination until 1980's. Something that perturb us today also is that harassment was prevalent even in Indian mythological stories, Sita, Draupadi, Ahalya all faced it in some form or another. During the Colonial Rule "Prostitution" was introduced in India by the Britishers to entertain their sexual pleasure.<sup>3</sup>

During world war rape was often used as a means of psychological warfare in order to demoralize the foes. It was often recognized as a genocide which was done with the intention to destroy the enemy. Sexual Harassment during war used to occur in different situations which includes, institution based sexual slavery, wartime sexual harassment associated with specific war or mass killing.<sup>4</sup>

Sexual harassment is established in social practices and is exacerbated by power relations at the work environment. Except if there is sufficient accentuation on refinement at the working environment, legitimate changes are not really prone to be fruitful. Working environments need to outline their own complete arrangements on how they will manage Sexual harassment. Rather than cobbling together councils at the court's mediation, a framework and a course of review should as of now be set up.

The #MeToo movement brought up countless unreported sexual harassment cases. The movement not only targeted common people as the culprits but also several renowned personalities in the world of entertainment, politics and so on. One of the biggest such case of defamation was filed against minister of state for external affairs – M.J. Akbar for sexual misconduct. He later resigned after the allegations that were made against him by 16 women. These journalists reported that M.J. Akbar had harassed them sexually.<sup>5</sup> In the 80s and 90s, at that

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<sup>3</sup>Namita Handa Jolly, *How Would Sita or Draupadi Have Filed Harassment Cases Today?*, Women (March 17, 2017, 12.02 PM), <http://www.bcasonline.org/referencer>

<sup>4</sup>Benedict Helen, *Why Soldiers Rape-Cultural of Misogyny, Illegal Occupation, Fuel Sexual Violence in Military*, In These Times (August 13, 2008), available at [http://inthesetimes.com/article/3848/why\\_soldiers\\_rape](http://inthesetimes.com/article/3848/why_soldiers_rape)

<sup>5</sup>Prathma Sharma, *MJ Akbar files Criminal Defamation Case against Priya Ramani*, Livemint, Hindustan Times, (May 04, 2019, 7:29 P.M), <https://www.livemint.com/Politics/iHC5XzqXkEI3Dyntmh9fXJ/MeToo-MJ-Akbar-sues-Priya-Ramani-for-defamation.html>

time, he was associated with a newspaper in New Delhi as the editor. Other noticeable allegation was against Nana Patekar by the actress Tanushree Dutta. She stated that Patekar harassed her ten years ago on the sets of a movie she was then working on. According to the two eyes witnesses present on the set at Filmistan Studio in 2008 when the incident had taken place they said that both the actors were dancing several feet apart from each others so there was no proper evidence found to support the actress allegations. Thus, the case closed and Nana Patekar got the clean chit.<sup>6</sup>

Today in the 21<sup>st</sup> century as #MeToo Movement gains traction in India, the number of workplace sexual harassment complaints are likely to balloon. The pressure on employers to safeguard workplaces, is now more than ever including effective and speedy disposal of complaints of sexual harassment, in line with the spirit of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Keeping with its destinations, the Act throws a commitment on bosses to give a sheltered work environment liberated from badgering including constitution of an Internal Complaints Committee ('ICC'). At every office or part of an association utilizing in excess of 10 representatives, for accepting and redressal of protests of lewd behaviour. The rebelliousness with this obligatory arrangement of the Act among other compulsory arrangements, additionally draws in a punishment, including burden of a fine and withdrawal, non-recharging or scratch-off of permits to operate, by and large, in the event of rehashed resistance. The Act gives a confinement period inside which a protest of inappropriate behaviour can be held up with an ICC.<sup>7</sup>

In the case of Vishaka and others v. State of Rajasthan<sup>8</sup> and others was the first ever legal action that provided a broad framework for preventing and addressing cases of sexual harassment of women within the workplace. It recognized that sexual harassment of women in the workplace resulted in the violation of their fundamental rights of gender equality, right to life and liberty, and the right to carry out any occupation, trade or profession.

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<sup>6</sup>India Today Web Desk, *Tanushree Dutta v. Nana Patekar Sexual Harassment Case*, India Today, (June 20, 2019 13:40 P.M) [www.indiatoday.in](http://www.indiatoday.in)

<sup>7</sup>*Internal Complaints Committee (ICC)-Women, Constitution of ICC-SHW for Considering complaints of Sexual harassment of Women employees at DST*, Department of Science and Technology (January 2, 2019). <https://dst.gov.in/internal-complaints-committeeicc-women>

<sup>8</sup> *Vishaka and others v. State of Rajasthan*, AIR 1997 SC 3011 (India)

This was the much publicized case of the gang-rape of a government social worker, Bhanwari Devi. A Writ Petition filed in the Supreme Court under the collective platform of Vishaka, a women's organization, along with four others, led to the Supreme Court directives which were to serve as guidelines on prevention of sexual harassment of women until the enactment of the Sexual Harassment Act in 2013. These directives, termed as the Vishaka Guidelines were part of the historic judgment passed on 13 August 1997. It included definition of sexual harassment, and stated that "such conduct can be humiliating and may constitute a health and safety problem", emphasizing preventive measures for sexual harassment. In the case of Medha Kotwal Lele and others vs. Union of India and others<sup>9</sup>. This case assisted the Vishaka's case to successfully execute the guidelines by issuing notices to all the states and the union territories in India to transmit the required steps.

## TYPES OF SEXUAL HARASSMENT

There are two types of Sexual Harassments:-

(1) one type of sexual harassment implies seeking sexual favors or making sexual advances in exchange for benefits at work. It includes instances when: There are implicit or explicit requests or demands for unwelcome sexual activity as a term or condition of employment. Consent to or rejection of unwelcome favours, explicit behaviour or speech is made a condition for employment, or refusal to comply with a 'request', met with retaliatory action such as dismissal, demotion, difficult work conditions.<sup>10</sup>

(2) Other type of sexual harassment is based on hostile working environment which involves uninvited and unwelcome conducts or behaviour whether they are physical, verbal, non-verbal or visual forms which makes work environment uncomfortable for a worker to work. Hostile working environment is usually dependent on circumstances, frequency (repetitive misconduct rather than a single episode of misbehavior), and severity.

Sexual Harassment is, most importantly, an appearance of intensity relations. In the case of Mahmood Farooqui Vs State (Government of NCT of Delhi).<sup>11</sup> The victim was the student of

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<sup>9</sup> AIR 2013 SC 93 (India)

<sup>10</sup> William Petrocelli & Barbara Kate Repa, *Sexual harassment on the Job: What is it & How to stop it* (4th Ed), <http://hrlibrary.umn.edu/svaw/harassment/explore/3causes.htm> (Last visited on 06/04/2020)

<sup>11</sup> Mahmood Farooqui v. State (Government of NCT of Delhi), 2018CriLJ 3457 (India)



Columbia University and had come to India to do research for her PhDs. She had gone to Farooqui's house to get tickets for a show. On the night in question the appellant invited the girl for dinner, in an intoxicated state he sexually harassed her and allegedly raped her. Women's are substantially more prone to be survivors of lewd behavior definitely in light of the fact that they more regularly need power than men, are in increasingly helpless and shaky positions, need self-assurance.

### **LAW RELATED ASPECTS FOR SEXUAL HARASSMENT**

In our Indian society men are always told to stay strong no matter what the situation is and if a man cries or seems weak then they are compared to women. Yes, even now this stereotypical behaviour among many people still exists. In fact, statistics indicate that almost one in five complaints about workplace sexual harassment to the Equal Employment Opportunity Commission come from men. The issue coming up is only increasing with movements such as #TimesUp and #MeToo, and there are times when most of the women put false allegations of sexual harassment on men just for the sake of victimizing themselves. The Indian laws and legislations only talk about rape, domestic violence and sexual harassment of females and males are often left unheard. There is only one section in the Indian Penal Code, 1860 and that is section 377 which talks about 'sodomy' irrespective of any gender biasness. Except this sections, all the other laws and legislations are meant for only females and hence it proves that their is unfairness in providing Equality and Justice.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 is an Indian legislative act that seeks to shelter females who faces sexual harassment at their workplace. The act also provides redressal mechanism to women to file immediate complaints and also states the concept of 'quid pro quo.' and hostile work area as a form of sexual harassment. It has specified its definition to include a much wider area, which refers to all the places that an employee visits during the course of employment, including use of transportation as well.

Earlier non recognition in legal framework of third gender has raised in them denial of equal work opportunity and extensive socio-economic discrimination in the society. In the case of

National Legal Services Authority v. Union of India and Others<sup>12</sup>, the court, declared Transgender apart from binary gender as “Third gender.” Even today they face sexual harassment at workplace which includes refusal to hire them, violation of their privacy, giving them less money for the job they do, harassing them either mentally or physically etc.

## **SOLUTIONS**

Developing and adopting a comprehensive policy on the prevention of sexual harassment is one of the key actions in preventing sexual harassment and promoting a safe working environment. The aim of such a policy should be to change behaviour and attitude of women and men at the workplace, and to provide a workplace environment conducive for both. The contents of a workplace policy on sexual harassment may include:-<sup>13</sup>

- A clear organization’s statement on sexual harassment, e.g - Sexual harassment is strictly prohibited ,Zero-tolerance policy: Organization will pursue all sexual harassment cases and not make any exception for perpetrator in question irrespective of the person’s status, - Anyone found guilty of sexual harassment after investigation shall be subject to immediate and appropriate disciplinary actions.
- Reference to relevant legislations.
- Consequences in case of breach of policy.
- Adequate provisions for regular and repeated training of employees at all levels.
- Details of the members of the Internal Complaints Committee.
- Procedures and options available for getting help and advice, making complaints, and handling cases which can include both formal and informal procedures.
- Procedures and rules for harassment of or by third parties such as clients and customers.

<sup>12</sup> National Legal Services Authority v. Union Of India and Others, AIR 2014 SC 1863 (India)

<sup>13</sup>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and the Rules, BCA Referencer (2013), available at [https://www.bcasonline.org/Referencer2016-17/Other%20Laws/The%20Sexual%20Harassment%20of%20Women%20at%20Workplace%20\(Prevention,%20Prohibition%20and%20Redressal\)%20Act.%202013%20and.htm](https://www.bcasonline.org/Referencer2016-17/Other%20Laws/The%20Sexual%20Harassment%20of%20Women%20at%20Workplace%20(Prevention,%20Prohibition%20and%20Redressal)%20Act.%202013%20and.htm) (Last visited on 06/04/2020)

- Timeframe for redressal procedures.
- A clear indication that all cases of sexual harassment will be kept confidential.
- Effective safeguards to ensure that the recommendations of the Committee implemented by the management of the institution.
- Displaying penal consequences of sexual harassment and information about the grievance handling mechanisms including about the Internal Committee. In case the workplace has many workers such as migrant workers who may not be fluent in the language commonly used in the organization, the policy may be made available in other languages as appropriate to raise awareness on the policy.

Compelling preparing programs are fundamental for sharpening all their staff individuals, to manage when it happens. The preparation program is the most ideal approach to guarantee appropriate comprehension and execution of the association's approach on inappropriate behaviour. Preparing for the individuals from the Complaints Committee and other people who are going to be instrumental in executing the strategy.

## CONCLUSION

After doing a proficient amount of research work on sexual harassment at workplace. We could procure the fact that sexual harassment is like an endemic not only in my nation but across the globe. It takes one individual's voice to break the dam of misconduct and such cases can be seen in many instances. It's an appalling reality for millions of workers regardless of any gender. It's about somebody snatching away the power an individual owns and it leaves them shattered from within, even if that individual recuperate from it but the bruise of it stays forever leaving them isolated. There are many who healed from it and came out even more stronger like a warrior. Those people are Harvey Weinstein, Chris Brown, Angelina Jolie, Maya Angelou, Vikas Sachdev, etc. 'Amar Pathshala' is the Primary school in Sethbagan, Kolkata, is providing education to the children of prostitutes. It seems that society has finally taken a step forward to accept the victims of Sexual harassment. All the people who face sexual harassment at their



workplace, their identity is individualism and are different from others but their problem is the same i.e., “sexual harassment.”<sup>14</sup>



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<sup>14</sup>Ruben Banerjee, *Children of Prostitute being guided towards a better life through education in Calcutta, India Today* (August 26, 2013, 17:48 P.M)