

**AN OVERVIEW ON WORKPLACE SEXUAL HARASSMENT AND LAWS IN INDIA**

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**ABSTRACT**

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as 'natural' male behavior or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace.

A safe workplace is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty.

**KEYWORDS:** - Sexual Harassment, UN, CEDAW, Prevention, Prohibition, Redressal, NGO.

**INTRODUCTION**



A safe workplace is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14,15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further enforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women's dignity violate the principle of equality of rights.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as 'natural' male behavior or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (i)(g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business"; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods.

To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large.

**OBJECTIVE: - TO KNOW ABOUT SEXUAL HARASSMENT AND LAWS IN INDIA.**

**DISCUSSION:-**

**Workplace Sexual Harassment- What Is It?**

**"No woman shall be subjected to sexual harassment at any workplace."**

**Section 3(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviours through which a woman can experience possible professional and personal harm, it presents the user with scenarios from across-section of work contexts to build clarity on different forms of sexual harassment as identified under the Act.

**WHO IS AN AGGRIEVED WOMAN?**

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any work place whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.



## Important Definitions

### **Aggrieved Woman:**

- **In relation to a workplace** a woman of any age whether employee or not who alleges to have been subjected to any act of sexual harassment by the respondent.
- **In relation to a dwelling place or house**, a woman of any age who is employed in such a dwelling place or house.

### **Domestic Worker:**

A woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

### **WHAT IS A WORKPLACE?**

A workplace is defined as "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertakings such as a journey." As per this definition, a workplace covers both the organised and un-organised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes: Government organizations, including Government company, corporations and cooperative societies; Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service.

- Hospitals/Nursing Homes

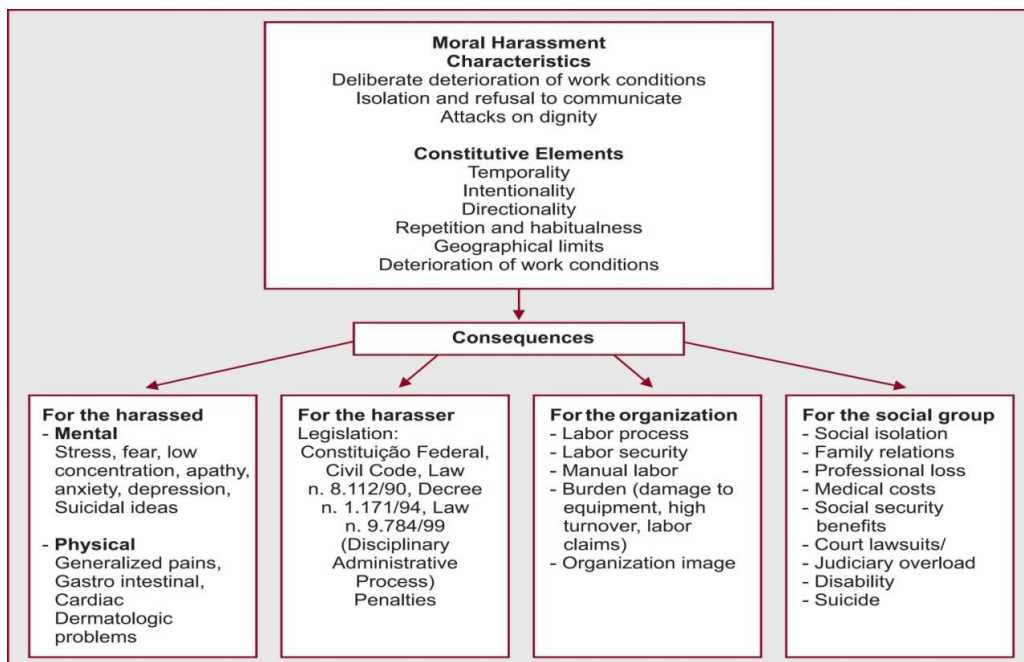
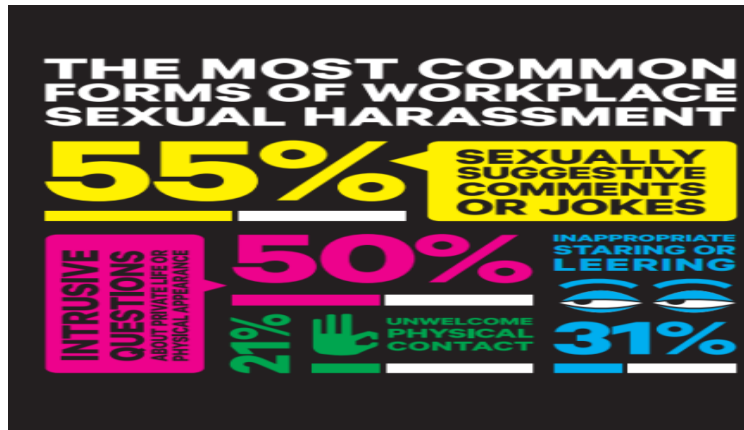
Sportsinstitutes/Facilities;

Places visited by the employee (includingwhileon travel) including transportation provided by employer;

A dwelling place or house.

self-employed workers engaged in the production or sale of goods or providing services of any kind;

- Any enterprise which employslessthan 10 workers.women working orvisiting workplaces.



The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013.[2] The Bill got the assent of the President on 23 April 2013.[3] The Act came into force from 9 December 2013.[4] This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute.[5][not in citation given][6] Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it.[7] According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013.[8] The government has threatened to take stern action against employers who fail to comply with this law.[9]

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.[11]

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan* (1997).[12] Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. *Vishaka v. State of Rajasthan* established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.[13] This case ruling had issued Vishaka guidelines under Article 32 of the Constitution of India. The Supreme Court had made it mandatory that these had to be followed by all originations until a legislative framework on the subject has been drawn-up and enacted. [14] However, the legislative void continued and the Supreme Court in *Apparel Export Promotion Council v. A.K Chopra* ((1999) 1 SCC 759) reiterated the law laid down in the Vishaka Judgment. Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country. The Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts. [15]

**End Sexual Harassment Advantage - Summary**

**Capacity building**

- Training material for decision-making
- Gender-neutral implementation guides
- How to detect false complaints
- Case studies
- Doubt-clearing with the help of experts
- Sample decisions, orders and summons and agreement drafts

**Sensitization**

- Highly simplified and engaging video training
- Sensitization materials accessible 24 x 7 on web and android
- Practice questions
- Certification for sensitized employees
- Hindi version available on request

**Compliance**

- Training material
- Sample reports
- Notices
- Employment clauses
- Checklists and flowcharts for ready reference

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011.[16][17] In May 2012, the Union Cabinet approved an amendment to include domestic workers.[18] The amended Bill was finally passed by the Lok Sabha on 3 September 2012.[19] The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013.

### Grievance Redressal Norms



**Workplace Sexual Harassment Example 1:-**

Sushila is a daily wage labourer working at a construction site. Every day at lunch time, Sukhi sits under the shade of the tree to feed her 16-month old baby. She finds Jaswinder, a worker, staring at her from the distance. Sukhi feels uncomfortable and asks Jaswinder to stay away from her while she's feeding the baby. However, Jaswinder persists and always finds a place near her. The group of fellow construction workers now constantly catcall and whistle at Sukhi every time she walks their way to refill the cement or mortar. When she questions them, they tell her they are only joking amongst themselves.

What is a Hostile Workplace Environment Sexual Harassment?

Ogling, stalking and gossiping against Sukhi in the above example constitute a hostile work environment, a form of workplace sexual harassment.

**Workplace Sexual Harassment Example 2:-**

Sulekha is a Captain with the Indian Army. She has refused an offer made by a Senior Officer for a relationship. Sumedha has kept quiet about this experience, but thanks to the rumour-mongering by the Senior Officer, she has acquired a reputation of being a woman of 'easy virtue'. Now she is being subjected to repeated advances by three of her senior officer colleagues. When she turns around and protests, she is singled out for additional physical training.

**CONCLUSION**

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the subsequent Rules have been framed and put to operations on 9th December, 2013. However, the effective use of this legislation is possible only through awareness generations among the masses, A large chunk of Government work force is still in the dark about the provisions and effectiveness of the statute.

Training intervention is the first step to make all employees aware about the salient features of this Act and various provisions. The promulgation of the Act itself is not panacea to solve the problem of sexual harassment at workplace but having information and knowledge about it is certainly an empowering instrument.

There are not many organizations who have the capacity to conduct quality training programme covering topics as varied as rights of the victims at one end and duties of representatives of employer while processing subject complaints-on the other. HR Managers also need to be trained to be responsible for sensitizing all the employees about the fine line between healthy mixing of colleagues of different sexes and the behaviour amounting to sexual harassment. ISTM has been conducting Gender Sensitization programmes for a long time.

This time, the focus is on the specific issue of sexual harassment at workplace -its prevention and redressal of complaints if it happens.

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