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# Sexual Harassment at Workplace

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## ABSTRACT

*As communicated in the Preamble to the Constitution of India, "fairness of status and opportunity" must be made sure about for every one of its residents; uniformity of each individual under the law is ensured by Article 14 of the constitution.*

*The Sexual Harassment at Women at Workplace (Prevention, Prohibition, and Redressal) act 2013 was established to guarantee safe working spaces for ladies and to assemble empowering workplaces that regard ladies' entitlement to the balance of status and opportunity. A viable execution of the demonstration will add to the acknowledgment of their entitlement to sex uniformity, life, and freedom, correspondence in working conditions all over the place. This paper would survey the feeling that all is well with the world in the working environment which will improve ladies' cooperation in work, bringing about their monetary strengthening and comprehensive development. A protected work environment is in this way a lady's lawful right. Without a doubt, the sacred convention of balance and individual freedom is contained in Article 14, 15, and 21 of the Indian Constitution. These articles guarantee an individual's entitlement to rise to insurance under the law, to carry on with a real existence liberated from segregation. Inappropriate behavior can be propagated.*

*This prompts poor efficiency and a negative effect on lives and jobs. To additionally exacerbate the issue, profound established socio social standards of conduct, which make a sexual orientation chain of command, will in general spot obligation on the person in question, subsequently expanding disparity in the working environment and the general public on the loose.*

## I. INTRODUCTION

Our Long past are the days when men used to be the sole providers of the family. Globalization has got an extreme change in the status of ladies around the world. Be that as it may, with the bigger flood of ladies in the standard workforce of India, lewd behavior at workforce of India, inappropriate behavior at work environment has expected more

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noteworthy measurements. The problem of sexual harassment relates not so much to the actual biological differences between men and women, but to the gender or social roles which are attributed to men and women in social and economic life, and perceptions about male and female sexuality in society<sup>3</sup>. Sexual harassment is not an epidemic, it is pandemic an everyday, everywhere occurrence. Work environment inappropriate behavior not just makes an unreliable and threatening workplace for the woman yet additionally discourages their capacity to convey in the present contending world as per the circumstances, it causes serious harm and is also the strongest symptom of sex discrimination in the workplace. The social construct of male privileges in society continues to be used to justify violence against women in the private and public sphere. Working environment inappropriate behavior, as different types of viciousness, isn't harmless. Along these, it includes major genuine wellbeing, a human, and financial and social cost, which uncovers them in the general improvement lists of a country.

“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>4</sup>, was India's first legislation specifically raising the issue of sexual harassment at a workplace”; “The year 2013 also witnessed the promulgation of the criminal law (amendment) act, 2013 (“Criminal Law Amendment Act”) which has criminalized offenses such “sexual harassment, stalking and voyeurism”.

Sexual harassment may take in multiple and in various<sup>5</sup> forms. It is not limited to demands for sexual favors which is made under the threats of adverse job consequences. However it's not that only women are victims of this malpractice but males also face it, though the percentage is low. But in some cases, it has been observed that males are more vulnerable to sexual harassment at the workplace.

A survey was conducted in which it was reported that 84.9 percent of the women faced sexual harassment in market places, 83 percent talked about metro stations, 82.4 percent in areas around schools and colleges and 79 percent in an industrial area. School and college students faced the highest incidence of verbal harassment as well as visual harassment.<sup>6</sup> The total number of sexual harassment cases in 2009 has now increased to 12,700 per year<sup>7</sup>. 121

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<sup>3</sup> ILO, Action against sexual harassment at work in Asia and the Pacific, 2001, p.8

<sup>4</sup> Amolya, Sexual Harassment At Workplace (Prevention, Prohibition, And Redressal) 2013: A critical Analysis, Academike <https://www.lawctopus.com/academike/sexual-harassment-workplace-prevention-prohibition-redressal-act-2013-critical-analysis/> published on (03-02-15)

<sup>5</sup> David E. Terpstra, D.E. Employ Response Rights J (1996) 9: 303: ISSN no.1573-3378 Vol. no .9 <https://doi.org/10.1007/BF02639904> (accessed on 05-10-19)

<sup>6</sup> Kalpana Sharma, Sexual Harassment, Fear in the city, <http://www.indiatogether.org/2010/aug/ksh-harass.htm> published on (22 August 2010)

<sup>7</sup> Misogynit, Shocking Reality exposed, Indian men are more vulnerable to sexual harassment as compared

women are sexually harassed every day, 1 woman was sexually harassed every 12 minutes also an increase of 20.6 percent was seen in incidents of sexual harassment between 1997-2002.

Therefore, women are not aware of sexual harassment and this is the reason where the situation is arising and due to this now the world takes a stand.

Commonly, women workers may face sexual harassment but may not be aware that they can do something about it. They need to know that they can do something about it. To change this thing, it is crucial that measures are to be taken to change the mindsets and attitudes by creating awareness about what constitutes sexual harassment and the steps that should be taken to avoid this thing.

## **II. HISTORY AND EVOLUTION OF THE LAW ON WORKPLACE SEXUAL HARASSMENT**

Though sexual harassment has been a fact of life since humans first inhabited the earth, it has only recently been acknowledged to be a serious and a real problem particularly at the place of work. The practice of sexual harassment is a century-old at least if we define sexual harassment as unwanted sexual relations imposed by superiors on subordinates at work. For example, sexual coercion was an entrenched feature of chattel slavery endured by African-American women without the protection of the law. Surviving accounts of women employed in manufacturing and clerical positions in the late 19<sup>th</sup> century's also point to varieties of contexts in which men imposed sexual relations.

Tort law was more effective as a weapon against sexual coercion at work; initially "tort law "gave women no right to recover damages for sexual assault." At common law, sexual assault gave rise to an action for damages in so far as it is inflicted an injury on a man's property in the woman who was assaulted.

Sexual harassment was first coined in the United States of America then was followed by Australia, Canada, New Zealand, and Japan. From the year 1975 onwards it came to be known in the public media<sup>8</sup>.

Therefore, in the area of Sexual harassment at work, the development of jurisprudence has worked upon to possibly identifying the two main forms of sexual harassment-

- Sexual blackmail (quid pro quo harassment) and

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<http://misogynit.wordpress.com/2010/09/19/shocking-reality-exposed-indian-men-are-more-vulnerable-to-sexual-harassment-as-compared-to-women/> published on (September 19, 2010)

<sup>8</sup>Supra n. 2. p. 2

- Hostile environment

Quid pro quo harassment typically occurs when a supervisor requests a sexual favor in return for giving an employee an employment-related benefit a raise, a promotion or positive job review, for instance. The hostile environment was first-ever recognized in the United States of America to penalize harassing behavior that created an intimidating, hostile and offensive working environment but did not necessarily result in economic loss in retaliation to a rejection of a sexual demand or proposition<sup>9</sup>. While recognizing this form of harassment, the US courts have relied upon the guidelines on the subject by the American equal employment opportunity commission (EEOC) established under the civil rights act of 1964. Sexual harassment may manifest itself physically or psychologically. It is milder and subtle forms may imply verbal innuendo, inappropriate affection gestures or propositions for dates and sexual favors. However, it may also assume blatant and ugly forms like leering, sexual assault or sexual molestation. A hostile working environment includes discussing sexual activities, touching someone unnecessarily, using unseemly gestures, using crude offensive language.

#### **(A) United States**

Lewd behavior at work happens at whatever point unwelcome behaviors dependent on sexual orientation influence an individual's activity. It is unwelcome lewd gestures, demands for sexual favors<sup>10</sup> and other verbal or physical lead of a sexual sort when:

- Submission to the lead is made either expressly or verifiably a term or state of a person's business,
- Submission to or dismissal of the lead by an individual is utilized as a reason for business choices influencing such individual, or
- The lead has the reason or impact of nonsensically meddling with a person's work execution or making a scary, unfriendly, or hostile workplace.

#### **(B) European Union**

According to the ILO, the European Union is most active in the field of combating sexual harassment at the workplace. Sexual harassment means unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at the workplace.

Sexual coercion in the workplace has long been a primary driver of gender inequities. The elimination of gender-based discrimination has been one of the fundamentals of the

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<sup>9</sup> Quebec v. Habach, date of decision 29-3-1992, Canada Human rights tribunal

<sup>10</sup> Amanda Reed, A brief History Of Sexual Harassment in the United States, <https://now.org/blog/a-brief-history-of-sexual-harassment-in-the-united-states> published on(05-07-13)

Constitutional edifice of India. The landmark judgment of *Vishaka v. State of Rajasthan*<sup>11</sup> was first recognized by the Supreme Court of India, wherein the various guidelines have been framed by the Supreme Court and certain directions were issued to the Union Of India to enact a significant law for combating workplace sexual harassment. This case <sup>12</sup>*Vishaka and others V. State of Rajasthan* have been credited with establishing sexual harassment as illegal in India.

“In 1992 a socialworker named “Bhanwari Devi” was engaged by the state of Rajasthan to work towards the prevention of the practice of child and multiple marriages in villages. While she was trying to stop the marriage of a one-year-old girl. In the year 1992, she was gang-raped by five villagers in front of her husband because she tried to stop child marriage. Since she was a nine-month-old year child and Bhanwari Devi stopped marriage she told her family and family refused to report to the police station and she was abused by her family and thrown out, there were five men from the family started beating in the fields and they raped her. Bhanwari Devi and her husband remained silent. When she approached the police and to file a report the police initially refused not to mention the incident and instead the victim was questioned whether she knows what rape is.

When she went to the hospital for medical examination, the doctor refused to examine her. Further at the police station, Bhanwari Devi along with her husband suffered more hostility and humiliation. Then the policemen asked Bhanwari Devi to leave her Lehenga behind as evidence and return to her village. She was raped in the public and it was 26 years since then. This was the first time a woman spoke about her sexual assault which took place openly in conservative Rajasthan. The villagers treated her as an outcast for rape Based on the facts of the case of Bhanwari Devi’s case; several women groups from various Ngo’s launched a campaign for justice for Bhanwari. Despite this all she remained strong and fought her case.” And in the year 1995, the accused were acquitted of rape.

“The judge mentioned several reasons for acquitting the accused”:

- Ahead of the village cannot rape
- Different caste of men cannot participate in gang rape
- Between the age of 60-70 year, people cannot commit rape
- <sup>13</sup>Higher caste cannot rape a lower caste woman because of reasons of purity

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<sup>11</sup>(1997) 6 SCC 241

<sup>12</sup> Ibid

<sup>13</sup>GeetaPandey, Bhanwari Devi: The Rape that led to India's sexual harassment law,

- She was a real star who fought for her sexual assault.

### III. WORKPLACE SEXUAL HARASSMENT-WHAT IS IT?

A ‘workplace’<sup>14</sup> is defined as “any place visited by the employee arising out of or during employment, including transportation provided by the employer for undertaking such a journey<sup>15</sup>.” As per this definition, it also covers both the organized and unorganized sectors.

It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the act, the workplace includes:

- “: Government organizations, including government company, corporations, and cooperative societies”<sup>16</sup>;
- “Private sector organizations, ventures, societies, trusts, NGOs or service providers services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health-related or financial activities, including production, supply, sale distribution or service”<sup>17</sup>;
- “Hospitals/Nursing homes”<sup>18</sup>;
- “Sports Institutes /Facilities”<sup>19</sup>;
- “Places visited by the employee(including while on travel) including transportation provided by employer”<sup>20</sup>;
- “A dwelling place or house”<sup>21</sup>.

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<https://www.bbc.com/news/world-asia-india-39265653> published on (17 March 2017)

<sup>14</sup>§(o) “workplace” includes—

(i) “any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;”

(ii) “any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;”

(iii) “hospitals or nursing homes;”

(iv) “any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;”

(v) “any place visited by the employee arising out of or during employment including transportation by the employer for undertaking such a journey;”

(vi) “a dwelling place or a house.”

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

### (C) Sexual Harassment

“Lewd behavior is conduct with a sexual meaning that is oppressive, damaging and unwelcome. It puts the injured individual in an air of terrorizing, humiliation or hostility. It might be comprised of numerous or a solitary demonstration and the expectation of the harasser has no relevance. There is an entire scope of conduct and activity, which may not fall unequivocally inside the definition above yet at the same time it might establish or may add up to lewd behavior”. The following can be not many of the outlines of such conduct and any of these might be seen as lewd behavior:

- “A sexual remark or explicitly decided to conduct”, for example,
- “Leering at another's body as well as explicitly intriguing motioning”
- “Displaying explicitly visual material, for example, stick ups, kid's shows, spray painting, PC projects and inventories of a sexual sort”.
- “Telling a lady representative about the manners in which she spruces up”.
- “Calling her up late around evening time with a solicitation to eat with her more than once with which she isn't happy”.
- “Making clearing explanations while conveying address on promoting, for instance, ladies are the best models to sell an item; that body of the vehicle could be smooth and attractive like lady cleanser must be delicate to contact, etc”.
- “Any other verbal or non – verbal direct sexual in nature”.

“Women's Bureau of the International Confederation of Free Trade Unions (ICFTU) defined sexual harassment as”:-<sup>22</sup>

“Sexual harassment is any repeated and unwanted verbal, physical or gestural sexual advances ,sexually explicit derogatory statement ,or sexually discriminatory remarks made by someone in the workplace which are offensive to the worker involved ,which cause the worker to feel threatened ,humiliated ,patronized ,or harassed, or which interference with the worker's job performance, undermine job security or to create a threatening or intimidating work environment.

It is a new name for a problem which is certainly not new. It is not sexual flirtation based on mutual consent. Sexual harassment is frequently a display of power, which is intended to intimidate, coerce or degrade another worker. It is a form of victimization about which increasing concern is being expressed in the workplace. Sexual harassment encompasses a

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<sup>22</sup>Quoted in AlokBhasin, Law Relating to Sexual Harassment at Work. First Edition (Lucknow: EBC 2007) at 19

wide range of unwanted sexual advances including unnecessary physical contact, touching or patting; suggestive and welcome remark jokes, comments about appearance and deliberate verbal abuse; leering and comprising invitation; use of pornographic pictures at the workplace; demands for sexual favors physical assault.”

A prominent confusion about lewd behavior is that it unavoidably incorporates physical sexual contact whenever, place and in any specific circumstance. Likewise, it may not be genuine consistently that each sort of sexual infringement should include obvious confirmation. The direct establishing lewd behavior incorporates both physical just as mental conduct. It might be unpretentious and incorporate verbal insinuations and tender signals that are improper in the conditions.

#### **(D) THE VULNERABLE**

Women, across the various age groups and class, face this menace. Younger and newer entrant's it not the profession especially in the private sector is equally vulnerable as women on the verge of their retirement. Even though who are widows who get jobs on compassionate grounds or divorced women are not spared.

Conceding and accepting that not all men are potential attackers, batterers, molesters and torturers of ladies, all ladies are potential exploited people as lewd behavior crosses all callings, social strata, and levels of pay. It very well may be effectively found in a film studio as in a record filled government office and in private associations, however, a few callings are more inclined to it than other people who endure peacefully, quit their occupations or get moves, as it is the most well-known at this point inescapable experience of working lady either in the pretense of 'innocuous' exchange or as unwelcome physical lead. It abuses one's opportunity as well as its poise and in this way, takes a genuine mental toll on ladies by making a scary, unfriendly and embarrassing workplace. Hence, It is the social disease that most ladies in some cases neglect to acknowledge earnestness of the issue and attempt to treat it as normal or expel it as standard and others throughout the years which thus to create inside methods for dealing with stress which appeared to manage the danger. Lady with practically no instruction, don't acknowledge the way that lewd behavior is unsuitable conduct. By and large, there is an absence of acknowledgment about safe places and substantial limits even among the mindful and instructed individuals.

#### **(E) The issue condition:**

The accompanying huge connections in this power condition can be recognized and clarified underneath and are as per the following:-

“Power game”:-

Sexual harassment speaks more to power relationships and victimization itself.<sup>23</sup> It is the ill-advised utilization of capacity to blackmail sexual delight and comprises of misperception or misconception of an individual's goals. It mirrors a power relationship, male over an exploitative female. "It results from an abusing control not from sexual fascination" as it mirrors a difference in power between the culprit and the person in question, which as a general rule, reflects the power differentials among men and above all ladies in the public arena. The lawful researchers and legal scholars have stressed that moment lead is questionable because it doesn't just meddle with individual existence of the people in question however it tosses even a pall on the unfortunate casualty's capacities and poise. Like all other recorded signs of brutality, inappropriate behavior is inserted in the financial and political setting of intensity relations. It is created inside the class, position and male-centric social relations in which male power commands. Lewd behavior is about strategic maneuver and sexual legislative issues.

#### **IV. SEXUAL DISCRIMINATION**

Inappropriate behavior can be translated as sex-based separation because the declaration of sexuality at the work environment is biased to the pride of the woman; it stresses the sexuality of exploited people over their job as laborers and along these lines forces less good working conditions upon them. The injured individual is focused on account of her sex. It is a piece of the entire disorder of segregation and misuse that maintains inconsistent monetary and social structures flourishing in an environment of danger, fear, and backlash. The accompanying sums may add up to such segregation:

- Finding shortcomings superfluously with the female representatives work or regarding her as on decoration or giving additional work to her
- Creating generalizations about the woman.
- Condoning such demonstrations of lewd behavior either by effectively or inactively by not making avoiding strides.

#### **V. SUBORDINATION**

Inappropriate behavior might be comprehended as an endeavor to organize the subjection of ladies to men in the work environment. The endeavor is to set up that ladies are sexual

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<sup>23</sup>Dr.Ritu Gupta, Sexual Harassment at Workplace, Sexual Harassment in the Workplace: Opportunities and challenges for legal redress in Asia and the Pacific; International Women's Right Action watch (IWRAW) Asia pacific,2005.p.2

creatures whose protection and respectability can be attacked freely and that they exist for man's incitement and delight. The vast majority of the ladies will, in general, be packed in the poor help occupations, similar to the secretary, typist, medical attendants, and other low profile posts were more often than not men are in quick supervisory and physically proximate position that gives them a chance to abuse their subordinate female workers. The common administrations and top administrative posts are as yet a microcosm notwithstanding equivalent open door provision in our constitution. This shows how ladies at work are defenseless against the impulse and extravagant of male bosses or directors, who are in the situation to rebuff or reward their subordinate ladies representatives financially. Hence by explanation of her generally frail situation in the working environment, the female representative regularly settles on a reasonable decision that the options in contrast to inappropriate behavior would be more unsafe than the physical and mental result of such provocation.

## **VI. SEXUAL HARASSMENT IS COSTLY TO VICTIMS AND ORGANIZATIONS –BUT MOSTLY COSTLY TO VICTIMS**

Organizational tolerance of sexual harassment has been identified as the most important influence on whether sexual harassment occurs in a workplace<sup>24</sup>. It<sup>25</sup> is prevalent in traditionally male occupations and organizations with large power differences within a hierarchical structure,<sup>26</sup> such as the military.<sup>27</sup> There is extensive evidence that victims of sexual harassment suffer a range of physical, psychological and career consequences. These costs include lower job satisfaction, worse psychological and physical health, higher absenteeism, less commitment to their organizations, higher quit rates.<sup>28</sup> Workers who report sexual harassment are more likely to face retaliation, which is associated with even greater

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<sup>24</sup>Louise F. Fitzgerald et al., Antecedents and Consequences of Sexual Harassment in Organizations: A Test of an Integrated Model, 82 *J. APPLIED PSYCHOL.* 578, 583–86 (1997);

<sup>25</sup>Chelsea R. Willness et al., A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment, 60 *PERSONNEL PSYCHOL.* 127, 135–39 (2007). A list of additional risk factors is provided in CHAI R. FELDBLUM & VICTORIA A. LIPNIC, EQUAL OPPORTUNITY EMPLOYMENT COMM'N, SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE, REPORT OF CO-CHAIRS 25–30 (2016) [hereinafter EEO TASK FORCE REPORT]

<sup>26</sup> Remus Ilies et al., Reported Incidence Rates of Work-Related Sexual Harassment in the United States: Using Meta-Analysis to Explain Reported Rate Disparities, 56 *PERSONNEL PSYCHOL.* 607, 609 (2003).

<sup>27</sup>Heather Antecol & Deborah Cobb-Clark, The Sexual Harassment of Female Active Duty Personnel: Effects on Job Satisfaction and Intentions to Remain in the Military, 61 *J. ECON. BEHAV. & ORG.* 55, 59 (2006).

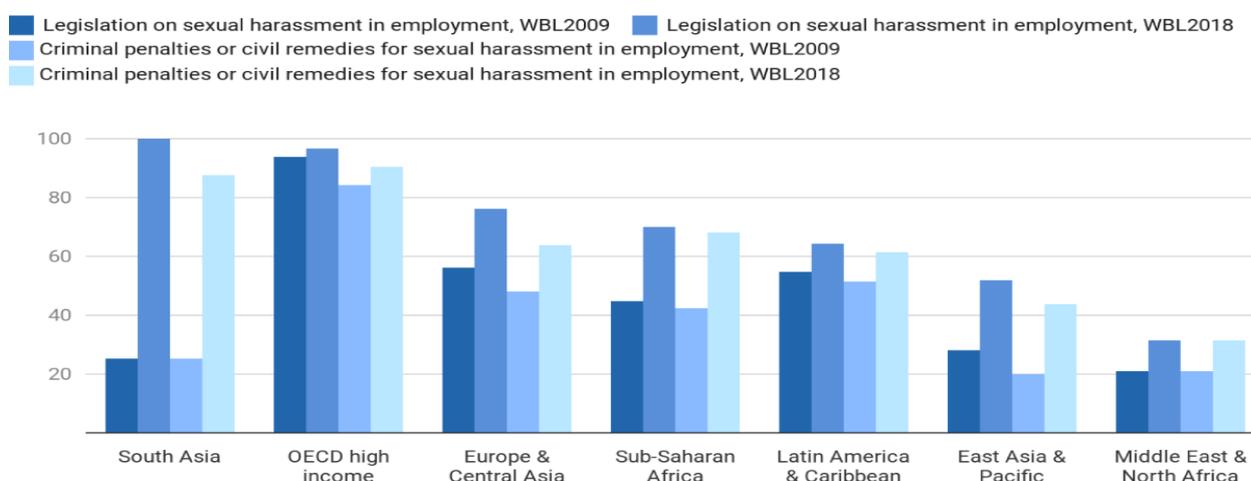
<sup>28</sup>EUROPEAN COMM'N. DIRECTORATE-GENERAL FOR EMPLOYMENT, INDUS. RELATIONS, & SOC. AFFAIRS, SEXUAL HARASSMENT IN THE WORKPLACE IN THE EUROPEAN UNION 5 (1998); U.S. MERIT SYS. PROTECTION BD., SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE: TRENDS: PROGRESS, AND CONTINUING CHALLENGES 24 (1995), <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=253661&version=253948&application=ACR BAT> [<https://perma.cc/EX8C-JATZ>] [hereinafter US MSPB REPORT];

loss of job satisfaction and worse <sup>29</sup>health outcomes than arising from the harassment alone.<sup>30</sup> The risk of retaliation is higher if the harasser is a supervisor.<sup>31</sup> However, comparing the costs of sexual harassment to the overall monetary scale organizations suggests that the costs to organizations are relatively small. The costs of workplace sexual harassment in the U.S. federal government over the two years from 1992 to 1994 were estimated to be \$327.1 million. This takes into account lost productivity due to job turnover, sick leave, individual productivity, and workgroup productivity, with the loss of workplace productivity accounting for 61 percent of the total. In sum, although one might expect that profit-maximizing firms would have an incentive to eliminate unproductive behavior because sexual harassment is costly for firms to monitor and eliminate, sexual harassment occurs in some workplace environments. The point is not that sexual harassment isn't costly to organizations it is therefore clearly understood that it is costly to victims.

These are the few database and pie charts which clearly show the sexual harassment happening at the workplace in India and International scenario:-

### Sexual Harassment at the Workplace: Progress Over the Past Decade

Countries with laws protecting women from sexual harassment in employment (%), WBL2009 and WBL2018

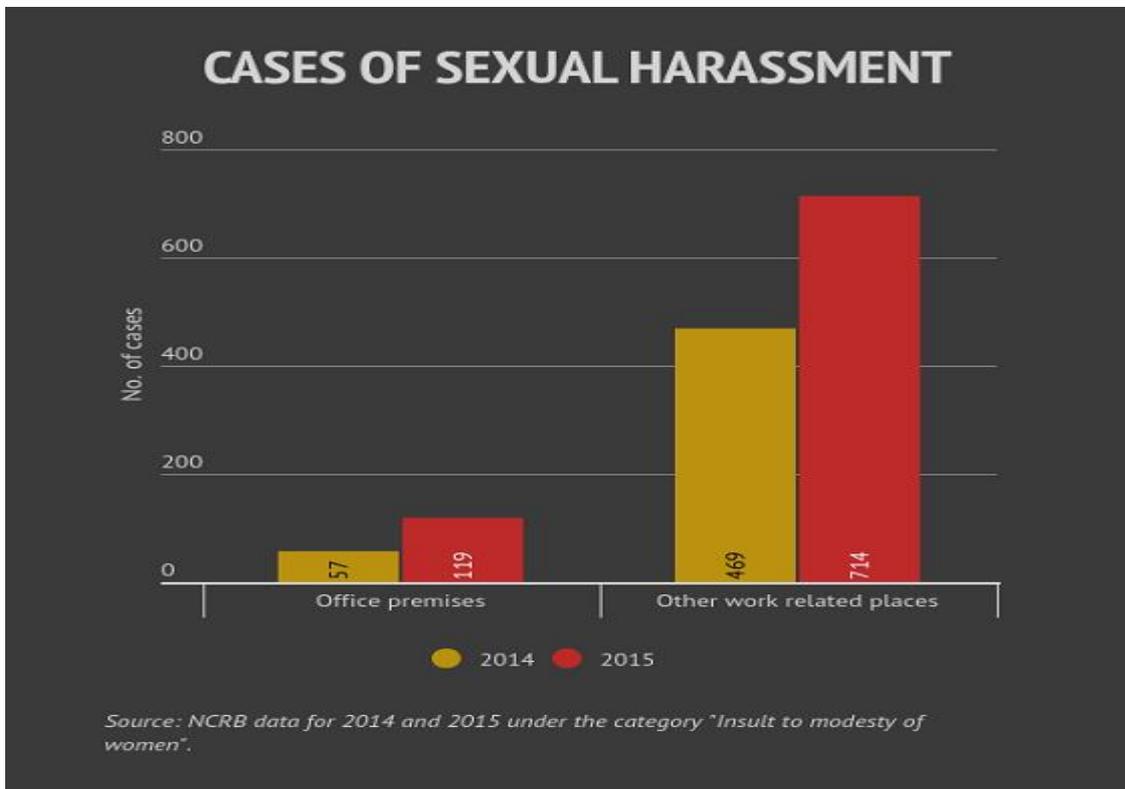
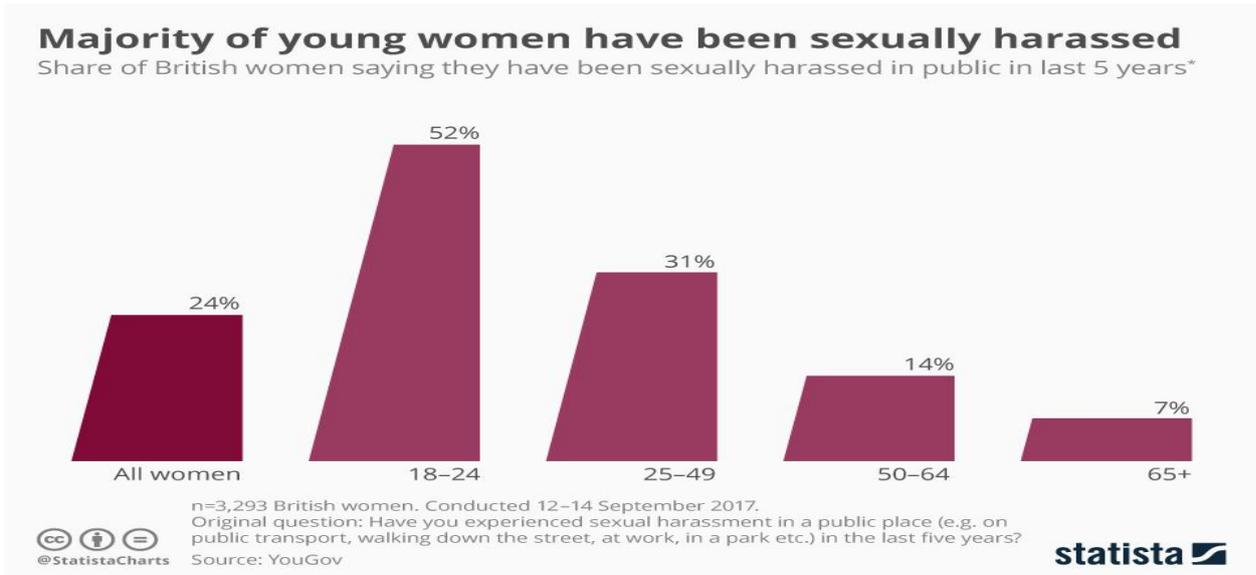


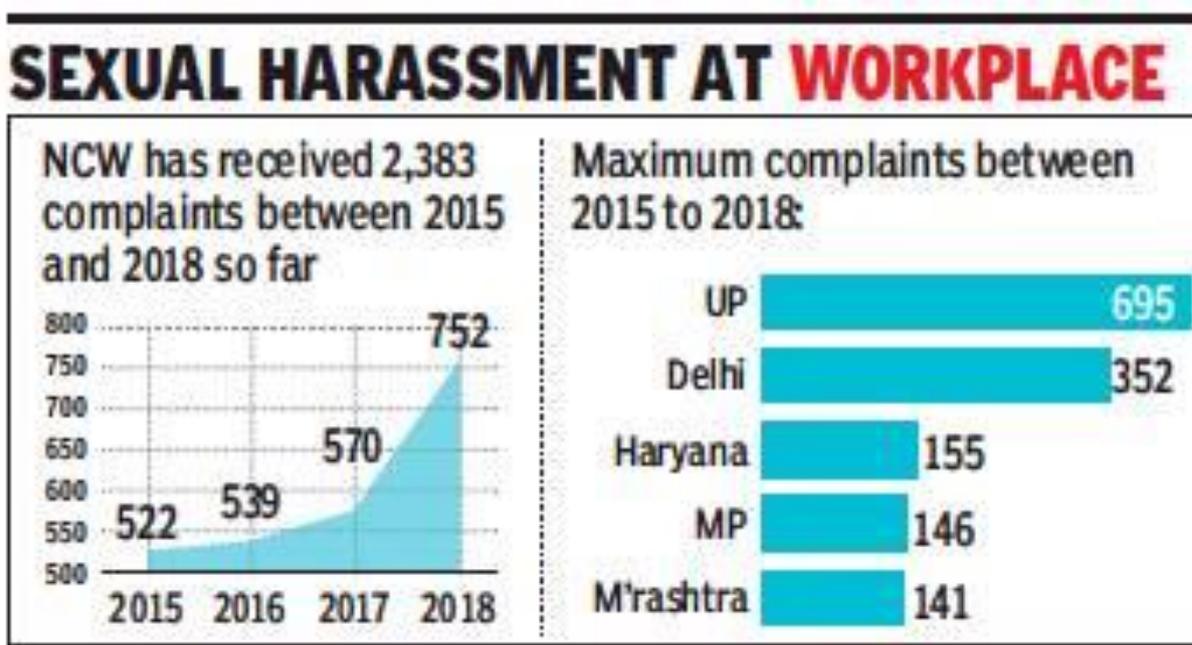
Source: [Women, Business and the Law database](#)

<sup>29</sup>Darius K-S. Chan et al., Examining the Job-Related, Psychological and Physical Outcomes of Workplace Sexual Harassment: A Meta-Analytic Review, 32 PSYCHOL.OF WOMEN Q. 362, 362–64 (2008).

<sup>30</sup>Mindy E. Bergman et al., The (Un)reasonableness of reporting: Antecedents and Consequences of Reporting Sexual Harassment, 87 J. APPLIED PSYCH. 230, 231 (2002).

<sup>31</sup>Blair Druhan Bullock, Judicial and Agency Enforcement of Nondiscrimination Laws Ph.D. dissertation, Vanderbilt University (on file at <https://law.vanderbilt.edu/phd/students/files/Bullock.pdf>) [https://perma.cc/PKH9-XJUW] (May 2015)





## VII. FORMS OF SEXUAL HARASSMENT

Innumerable behaviors can be described as sexual harassment. Loy and Stewart identify four types of sexual harassment-verbal commentary and sexual messages delivered through teasing off-color jokes and animal sounds; verbal negotiation which is under explicit sexual propositions and negotiations; manhandling touching such as patting; brushing against or privacy sexual assault invokes use of force<sup>32</sup>.

Feminists have referred the definition of sexual harassment as coercive which includes sexual misconduct that offers a benefit or reward to the person to whom it is directed, as well as sexual misconduct that threatens some harm to the person to whom it is directed and non-coercive which does not involve any reward or benefit rather what distinguishes the primary aim is not to get a women to perform sexually to him but to offend her.<sup>33</sup>

### (A) Issues

- Sexual harassment and related myths and realities
- The impact of sexual harassment on the victim and the employer
- Various statues and laws through which a victim can seek relief

#### 1. Sexual harassment and related myths and realities –

Many think and believe that sexual harassment is fun. The men predominantly think that a woman is generally accused of lacking a sense of humor and overreacting to what is supposed to be harmless fun. The peculiarity of the situation lies in the fact that it is men who

<sup>32</sup> Loy and Stewart quotes in Rosemarie Tong, Women, Sex and the law, 1994, p. 65

<sup>33</sup> Rosemarie Tong, women, Sex and the law, 1994, p. 67

commit these acts and men define what they are. Men often fail to understand why women find sexual advances and innuendos upsetting. The male belief is that any normal woman welcomes and is flattered by sexual attention in any form. The reality is that it causes physical exertion, stress and often forces women to eventually their jobs.

### **Women make false allegations of sexual harassment**

This kind of belief is very abstract and baseless. It reiterates a low opinion of the female sex in general. Mostly the victims are the women and they face disbelief, hostility, and censure where she makes the complaint of sexual harassment. Reality is that women have a great deal to lose if they complain, job, income, promotion, prospects, health, self-respect of colleagues and nothing to gain by complaining of sexual harassment falsely.

### **Is sexual harassment trivial?**

It is considered a trivial matter by men. The men do not understand the pressure or coercion involved in the woman's conflict who encounters sexual harassment at such a place. Sexual harassment is not trivial; it destroys the working capacity, self-confidence, ambition job satisfaction and performance of the victim. It is very intimidating and derogatory.

### **Sex role spillover**

Women are occupationally segregated as their place in the occupational world is characterized by lower pay than men, subordinated to male superiors, concentration sex-stereotyped occupation which requires the virtues of maturity nurturing and caring, etc. Women are generally portrayed as weak and subtle and thus they are often given works that are considered inferior or unfit for the male. Women over the ages have been perceived like this.

## **2. The impact of sexual harassment-**

The impact of sexual harassment is not only on the victim but also on an organization.

### **On the Victim**

The effect of inappropriate behavior on an individual is extremely serious in practically all cases. It influences a person's capability of work, prompts uneasiness, dissatisfaction, outrage and a lot progressively such sentiments of pressure and an individual lives in a condition of consistent pressure. The unfortunate casualty additionally feels embarrassed, guilty (transgression), pushed, on edge or discouraged, they lose trust in co-representatives. They, for the most part, need to avoid work. Absence of certainty and confidence in oneself and the work they do. They additionally experience the ill effects of physical side effects of pressure,

for example, cerebral pains, spinal pains, and rest issues, their public activity likewise gets destroyed life. An expanding number of unfortunate casualties experience the ill effects of inappropriate behavior disorder.<sup>34</sup>

### **On the Organization**

Many imagine that the impact of lewd behavior is just on the person who is its casualty however this isn't valid. It influences the association tremendously. The entire climate of the set up winds up undesirable and unfit for work relations, the collaborators and the partners likewise get influenced harshly. It prompts lower profitability, lower effectiveness, and a decrease in work environment confidence.<sup>35</sup>

### **3. Various laws under which the victim can seek relief**

#### **Development of laws in India:-**

There is no law in India as regards sexual harassment to date, neither In IPC nor constitution or any other legislation. While increasing awareness and emphasis on gender justice, there is an increase in the effort to guard against such violations and the resentment towards incidents of sexual harassment is also increasing.

In 1997, the Supreme Court of India, for the first time, recognized sexual harassment at the workplace as a violation of human rights. The landmark *Vishaka v State of Rajasthan* judgment outlined a set of guidelines for the prevention and redress of complaints by women of sexual harassment in the workplace.

The guidelines place the responsibility on employers to provide a safe work environment to their women employees and include both preventive and remedial measures to make the work environment safe for women employees.

Moreover, while the *Vishaka*<sup>36</sup> the judgment came into effect almost a decade ago, efforts to implement the guidelines have been limited. Indeed, many public and private organizations have not even set up complaints committees or amended the service rules, as mandated by the guidelines.

A recent bill on sexual harassment was passed in the year 2010 where the government has expressly laid down certain provisions and rules for all the companies to follow mandatorily. The Bill intends to ensure a safe environment for women at workplaces, both in public and

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<sup>34</sup>Dr. Vandana, *Women and Law, Sexual Violence Against Women*, [Lexis Nexis Butterworths Wadhwa], First edition, 2009, p. 308

<sup>35</sup>Supra n. 2. p.236

<sup>36</sup>(1997) 6 SCC 323

private sectors whether organized or unorganized. The proposed Bill, enacted, will ensure that women are protected against sexual harassment at the workplace, be it public or private. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth. The Bill provides for safeguards in case of false or malicious complaint of sexual harassment. However, mere inability to substantiate the complaint or provide adequate proof would not make the complainant liable for punishment. The major provisions of the same include that a fine of Rs.50, 000 shall be imposed on the harasser, the committee shall include at least 50% of women and it shall be obligatory for the committee to complete the investigation within 190 days.

Under article 14 of the Indian Constitution, these guidelines and norms of the Supreme Court have become the law of land. When a person is sexually harassed his/her fundamental rights under Article 14 which is right to equality, Article 15(1) which is no discrimination against any citizen on grounds of sex, Article 16 (1) which is equal opportunity for all citizens in matters relating to employment, Article 19(1)g which is freedom to any trade and profession or business and Article 21 which is right to live with dignity is violation

## **VIII. SUGGESTIONS AS TO UNDER WHICH LAW SEXUAL HARASSMENT LAWS CAN BE INCORPORATED**

### **1. Tort law**

Assault and battery claims for the purposes of sexual harassment cases are usually founded on allegation of “offensive physical contact of a sexual nature”; while invasion of privacy claims may apply to situations where “intrusive sexual injuries” have been made by a supervisor in the workplace or where sexual taunting or vulgar sexual propositions have occurs.<sup>37</sup> Sexual harassment is an institutional act that causes harm. Tort law encompasses both negligent acts resulting from carelessness or inattention and intentional acts that cause harm. Vicarious liability is also a development. It is also known as a strict or no-fault liability because it is imposed in the absence of fault of the employer.<sup>38</sup>

### **2. Equal Opportunity laws**

The constitutional guarantee of equality is invoked in many countries like Australia, UK, the US, Denmark to prohibit sex discrimination at work. In addition to the accused, the employer is liable for not providing a workplace environment that is free from discriminating based on

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<sup>37</sup>Pease v. Alford Photo industry, 667, F. Supp 1188, 49 FEP Cases 497 Source: the condition of work digest, ILO

<sup>38</sup>Bazley v. Curry (1999) 2 SCR 534

era.<sup>39</sup>

### 3. Labour laws

It can be potentially used to protect against constructive or unfair dismissal based on an objection to or refusal of sexual harassment, tounfair dismissal provision in legislations dealing with contracts of employment.<sup>40</sup>

### 4. Criminal Law

Section 509 of IPC defines the word, gesture or act intended to insult the modesty of a woman and section 354 assault or criminal force to woman with intent to outrage her modesty and section 298A under which one seeks relief for eve-teasing. The major flaw of this is that it does not take into account the employer's liability and also it does not provide for compensation to the victim. In a case<sup>41</sup> the apex court held that the essence of a women's modesty is in her sex, young or old, intelligent imbecile, awake or sleeping, the women possess modesty capable of being outraged.

## IX. SEXUAL HARASSMENT PREVENTIVE POLICIES AND SUGGESTIONS

It has turned out to be progressively clear over ongoing decades that administrative measures for battling lewd behavior should be joined by counteracting components presented at the working environment level.<sup>42</sup> This has been understood that preventive or remedial systems have, by and large, an edge over enactments which is chiefly corrective. All through the world, governments, businesses'/laborers' association and NGOs are progressively upholding that lewd behavior is tended to through workplace strategies and grievances methods. This pattern mirrors the acknowledgment that works environment arrangements can be the best instrument for forestalling the inappropriate behavior. Instead of being limited to lewd behavior, their primary job is to guarantee that it doesn't occur<sup>43</sup>.

### Policy statements:

Policy statements by themselves appear to themost useful; in avoiding types of lewd behavior which include conduct that isn't gone for explicit peoplespecific individuals such as offensive comments about women in general, or the display of sexually suggestive or explicit material.

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<sup>39</sup>Supra n.32. p. 308

<sup>40</sup>Michael Rubenstein, legal approaches to Sexual harassment in condition, work digest, vol. no 1 1992, p. 52

<sup>41</sup>Major Singh v. the State of Punjab, 1967 AIR 63 1966 SCR (2) 286

<sup>42</sup>Technical Report For Discussion at the ILO / Japan Regional Tripartite Seminar On Action against Sexual Harassment at work in Asia and the Pacific, Malaysia,2001,p.65

<sup>43</sup>, Michael Rubinstein,Dealing with Sexual Harassment at Work:The experience of industrialized countries in ILO,Conditions of Work Digest: Combating Sexual Harassment at work,Geneva.

With such a policy, it is always useful to draw up a code for managers as well as employees, and outlining the procedure each would need to follow in cases of sexual harassment.

- The association/foundation ought to detail arrangement proclamations explicitly announcing that specific working environment as "Zero Tolerance Zone" which means in this manner that lewd behavior will not go on without serious consequences or overlooked under any conditions by the business.
- The language used for that approach should be straightforward, unambiguous and unequivocal
- Sexual badgering must be defined and explained with illustrations to make it clear beyond doubt that what is and what is not sexual harassment.
- The policy statement should expressly declare that any act of lewd behavior at work environments may add up to misconduct for which the delinquent employee would be liable to be punished.
- The approach ought to require casualties of inappropriate behavior to report such occurrence conduct to their prompt administrator or chief.
- It should categorically declare that the employer and the administration resolve to handle any sort of inappropriate behavior and the same would be kept confidential and in all sincerity.
- The approach proclamation should also place a "positive obligation on all workers to comply with the strategy and to guarantee that their partners are treated with respect and dignity.

"An employer should find a way to keep lewd behavior from occurring such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to rise and how to raise the issue of sexual harassment and creating strategies to sharpen all concerned."<sup>44</sup>

Among preventive measures, the rules after the Vishakha<sup>45</sup> judgment recommends that associations make open in suitable manners an express restriction of inappropriate behavior in the work environment, alter direct assistance principles to incorporate lewd behavior as an offense and raise familiarity with suitable disciplinary estimates that will be taken against the guilty party. Lewd behavior is profoundly under-reported phenomena as different myths encompass this idea. It's anything but a statement of desire however it is a type of persecution, exploitation also, terrorizing dependent on connections of intensity and

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<sup>44</sup>29 CFR 1604.II(f)

<sup>45</sup>(1997) 6 SCC 241; AIR 1997 SC3011

authority. The rules make it required for employers to set up a grievances panel headed by a woman. To guarantee impartiality, the panel is to incorporate a third party from a non-administrative association or some other individual acquainted with issues of lewd behavior. There ought to be an express forbiddance of inappropriate behavior at the work spot and this restriction ought to be informed, distributed and coursed in suitable ways with the goal that consciousness of the privileges of representatives are made in the Organization. Proper disciplinary activity ought to be started by the Organization in case of an offense. The national commission for women has proposed different bills for the usage of laws for the equivalent however none of these have been passed at this point. Along, there must be a substantive law for the equivalent. Likewise, a discipline with remuneration must be accommodated to the guilty party.

## **X. CONCLUSION**

Regardless of many years of consideration, lawful activity, and support, this examination of information, research, and experience demonstrate that inappropriate behavior stays a genuine and inescapable issue crosswise overall industry areas and work environments. We found that no division stays immaculate by lewd behavior, nor unaffected by its effects: Sexual badgering harms the lives, wellbeing, monetary freedom, and chances of innumerable exploited people, and costs organizations in lawful charges, however in lost efficiency, spirit, viability, and talent.

By and by the time is over of talk to verify the working women against lewd behavior; it's a high time to adhere to the laws to shield the working ladies which will, finally, offer a positive hint to set up a created and dynamic culture. The pictures of women ought to be changed that they have been made for more than several years. Women must be considered as individuals who are identical to men in their one of a kind right. The managers must view women as a part and not similarly as recipients. Women in like manner must be unequivocal and develop a self – character with the goal that they can lead a presence of security and respectability. They should likewise be made monetarily free to accomplish this point. Since the whole law prerequisite associations, the police officers, judges, legal counselors, and authorities are drawn from the majority that has an inflexible and moderate frame of mind about women's privilege and status; it is local to expect powerful authorization of the defensive laws of these individuals ought to make a characteristic inclination against women. Even though it is beyond the realm of imagination to expect to prepare and change the demeanor of everybody, it is surely conceivable to prep and changes the frame of mind

methodologies of some based. Further, women's associations should assume an urgent job to make lawful mindfulness among the majority. They ought to associate with neighborhood individuals in spreading mindfulness about their genuine rights and responsibilities.

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