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# SEXUAL HARASSMENT IN INDIA: BRIDGING LEGAL LOOPHOLES AND MENTAL HEALTH EFFECTS ACROSS GENDERS

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**ABSTRACT**

*In a world that prides itself on progress and equality, the persistent issue of sexual harassment remains a dark stain on our collective consciousness. Regardless of the implementation of Vishaka guidelines in 1997 along with the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, sexual harassment cases have been increasing year by year, not just for women, but also for men. This paper seeks to examine the complexity of sexual harassment, highlighting its impact on both the genders. Traditionally viewed through the lens of a one-sided, gendered problem, it is critical to recognize that sexual harassment is not exclusive to any single gender. It is often perceived as a concern within corporate sector, However, even the Judiciary which is itself the "justice provider" is not exempt from this social evil. The method used in this research paper involves reports and statistical data from National Crime Records Bureau (NCRB), an Indian Government agency that collects and analyzes criminal data. The gathered data is then analyzed and synthesized to support the study's findings and conclusions. The following data has been collected by analyzing the changes in the total number of reported cases of sexual harassment over a decade (2014- 2022). In 2014, the NCRB reported 36,735 cases of sexual harassment and around 4,26,433 total cases in 2022 which indicates an upward trend over the years. From 2014 to 2017, there was a 54% increase in registered cases of workplace harassment. The urgency of addressing sexual harassment against all genders, lies not only in the need for legal and institutional reforms but in the broader mission to create environment where respect and equality are no optional but fundamental.*

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**KEY WORDS**: SEXUAL HARASSMENT, WORKPLACE, NCRB, MENTAL HEALTH

## INTRODUCTION

In earlier times, women were often regarded secondary to men as their primary responsibilities were confined to managing the household, looking after their children and family members. Their role was largely limited to the home, and they were discouraged from stepping outside or pursuing any external work. Society placed little value on their contributions outside the household. The Philosophers and Law makers of ancient time described women's inferior status through their writings and preachings. Shakespeare described women as 'Frailty thy name is women'. Similarly, according to Manu Smriti: 'In childhood the parents, in youth the husband, in old age the sons are the guardians of woman and the woman should never be free.'[3] Even the Islam commanded the woman to be in strict "Purdah" as her beauty and elegance are only to be exposed to her husband[4], and not in public, as the contrary is against their nature and was considered improper.

The changing evolution of women's roles in society has led to their increasing independence and participation in the workforce, where they are standing on their own feet. However, this shift brings about several challenges. As women step into traditionally male-dominated spaces, they often face immense pressure and tension. One of the most alarming issues is sexual harassment, which many women face. Interestingly, some women, who have gained more power and dominance in these spaces, may also misuse their position, leading to harassment towards men.

It's important to note that sexual harassment is not just physical-its psychological impact is profound, severely affecting mental health. This also disrupts their personal relationships. The reality is that sexual harassment is prevalent across all sectors and professions, and no field is untouched by it. It's not about whether women are more or less involved in a certain field; the issue of harassment exists universally.

## THE CONCEPT OF SEXUAL HARASSMENT

The word Sexual Harassment of women is in forefront now-a-days. The conduct and behaviors it describes are centuries old but the word itself is said to have emerged in the mid- 1970s in

[3] GENDER JUSTICE (Dr Nirmal Kanti Chakrabarti, Dr Shachi Chakrabarty eds., 1st ed. 2006).
[4] Imtiaz Husain, *Crimes Against Women*, 12 CILQ 466 (1999).

North America and was consequently adopted in UK in early 1980s.[5] In the UK, the laws of Sexual Harassment have been found to be inclined towards discrimination in the field of employment, whereas, in United States, this concept goes beyond discrimination and is directly related to the Modesty of women.

**Catharine MacKinnon** in 'Sexual Harassment of Working Women: A Case of Sex Discrimination' (1979), defines Sexual Harassment as "the unwanted imposition of sexual requirements in the context of a relationship of unequal power."[6]

## INTERNATIONAL PROVISIONS ON SEXUAL HARASSMENT

- **ILO Convention No. 190 (Violence and Harassment Convention, 2019)** was the first international treaty to address violence and harassment in the workplace, including sexual harassment.[7]
- **Article 11 of Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1979)** calls on states to ensure equality in employment and protect women from harassment in the workplace.[8]
- **Article 7 of the International Covenant of Economic, Social and Cultural Rights** recognizes the right of women to fair condition of work and states that the women shall not be subjected to sexual harassment at the place of work. [9]
- **The European Commission Code of Practice** defines Sexual Harassment as 'unwanted conduct of sexual nature, or other conduct based on sex affecting dignity of women and men at work. This includes unwelcome physical, verbal or non-verbal conduct. [10]
- **Universal Declaration of Human Rights (UDHR, 1948)- ARTICLE 1 and 23** provides the Right to Dignity and Favorable Work Conditions.[11]

Above mentioned are some of the provisions on sexual harassment which have been taken from different international treaties and conventions. Still, there has been a void in considering the

[5] ALISON M. THOMAS & CELIA KITZINGER, SEXUAL HARASSMENT: CONTEMPORARY PERSPECTIVES (Alison M. Thomas et al. eds., 1st ed. 1997).
[6] CATHERINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN (eds., 1st ed. 1979).
[7] International Labour Organization, *Violence and Harassment Convention*, 2019 (No. 190), June 21, 2019.
[8] Convention on the Elimination of All Forms of Discrimination Against Women, art.11, Dec. 18, 1979.
[9] CHAKRABARTI, *supra* note 1, at 238.
[10] Rubenstein, M., *The Dignity of Women at Work*- A Report on the Problem of Sexual Harassment in the Member States of the European Communities 12-14 (1988).
[11] Universal Declaration of Human Rights, arts. 1, 23 (Dec. 10, 1948).

effective measures and implementing laws to curb sexual harassment at workplace as most of the developing and under- developed countries do not even recognizes it as a crime.

**INDIAN CONTEXT**

The concept of sexual harassment at workplace in India was not as such recognized by Indian courts until the mid 1990s. But, in the case of **Rupan Deol Bajaj vs. Kanwar Pal Singh Gill** [12](1995), the court recognized sexual harassment as a crime falling squarely under Section 354 of The Indian Penal Code by including outraging dignity of a woman.[13] Later, in the landmark judgement of **Vishaka vs. State of Rajasthan and Ors.**[14] (1997), Supreme Court for the first time defined sexual harassment at workplace. One of the key contributors before Vishaka Guidelines were the Feminist Movements of 1970s in which women scholars like Vina Mazumdar, Madhu Kishwar, and Urvashi Butalia wrote extensively on women's rights and raised awareness about sexual violence and harassment.[15]

The most recent legal provision which deals with the definition and punishment for sexual harassment is given under **section 75 of Bhartiya Nyaya Sanhita, 2023**.

Acts that constitute sexual harassment includes:

(a) Making unwelcoming and explicit sexual advances or physical contact
(b) Demanding or requesting sexual favors
(c) Showing pornography against a woman's will
(d) Making sexual colored remarks

Penalties: The punishment for sexual harassment can include imprisonment up to 3 years for the acts mentioned in (a), (b), (c) and up to 1 year for act under (d) along with fines or both.[16]

Before Bhartiya Nyaya Sanhita, 2023, Section 354A of the Indian Penal Code,1860 criminalizes sexual harassment. But no major differences have been identified between the two, leaving the scope narrowed, even after attaining independence for more than 75 years. Over the course of such a long period, the working environment and societal dynamics for women

[12] Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill Anr., (1995) 6 SCC 194 (India).
[13] *Forms of Sexual Harassment at Workplace*, Vikaspedia (June 28, 2024), https://socialwelfare.vikaspedia.in/2024/06/28/forms -of-sexual-harassment-at-workplace
[14] Vishaka & Ors. V. State of Rajasthan & Ors., (1997) 6 SCC 241 (India).
[15] RADHA KUMAR, THE HISTORY OF DOING: AN ILLUSTRATED ACCOUNT OF MOVEMENTS FOR WOMEN'S RIGHTS AND FEMINISM IN INDIA, 1800-1990 (2nd ed. 2002).
[16] Bhartiya Nyaya Sanhita, 2023, § 75.

have evolved and still, the Indian law remained unbothered about the urgent need to introduce effective provisions which are concerned with the safety and security of women.

## FORMS OF SEXUAL HARASSMENT

### *(A) QUID PRO QUO*

The term "QUID PRO QUO" is a Latin term which means "something for something",[17] signifying an unethical exchange where professional benefits are conditioned on inappropriate personal demands. It is a situation when a superior seeks sexual favors from an employee in exchange for promotion or job benefits and submission and refusal to such conduct impacts the employee's promotion, job assignments and other career opportunities.

### *(B) HOSTILE WORK ENVIRONMENT*

A "hostile work environment" refers to creating such a toxic and unfavorable atmosphere in a workplace that it becomes unbearable for an employee to be there. This may include acts like making inappropriate sexual jokes, posting obscene materials or engaging in behavior that harasses the employee, thereby violating their dignity and comfort in the workplace.

## FACTORS CONTRIBUTING TO SEXUAL HARASSMENT

Having discussed what sexual harassment actually means and further mentioning legal provisions dealing with it. Now, it becomes equally important to dwell into the root causes of this societal evil.

Sexual harassment is being encouraged due to our patriarchal society and its mindset, which considers women secondary and subordinate to men and does not give equal importance to their pain compared to men's. Whenever women work, they are controlled and challenged by the society at every stage. Society does not allow them to enter in certain professions which it thinks are only fit for men like Defense Forces, Police and even Corporate Sector. Even if they work at male dominating sectors, they are illtreated, not equally paid and harassed. As many

[17] Adam Hayes, *Quid Pro Quo: Definition, Examples, and Legality*, Investopedia (Feb. 12, 2024), https://www.investopedia.com/2024/02/12/quid-pro-quo-definition-examples-and-legality

as 17% women have been sexually harassed at their workplaces, in both organized and unorganized sectors. [18]

Women are often discouraged from pursuing work, which hampers their ability to take initiative, ultimately rendering them reliant on men for support. The evidence of discouragement can be seen from the very fact that even though the number of women being educated is on the rise, but their incomes are still less than a man's. Women earn 62% of men's salary for equal work.[19]

Talking about patriarchal mindset, it is not only limited to men, but women are raised in such an environment where they see themselves inferior to men as they have been taught about the differentiation of work on the basis of gender and they dare not standup firm on their feet and fight against the society because they think society will not believe them rather blame them. On the contrary, they choose to quit their jobs in the name of protecting their family's reputation. Up to 10% of women have to quit a job because of sexual harassment.

Sexual harassment is not something we encounter only during our professional lives; Boya and Girls often encounter it from an early age- be it in school or college, however they are unable to speak up against it due to lack of awareness and fear of judgement. Mostly students do not open up over such issues with their parents. It is seen that 60% of children speak up to their friends or teachers rather than the family members. It is evident from the fact that talking about sex at our homes is considered a taboo.

Societal norms and Stereotypes associate sexual harassment with women only and overshadow men's experiences. There are less reported cases of men's sexual harassment because they fear societal judgement. They worry that society will view them with disdain, doubt their experiences and mock them. This fear often leads to self-doubt, making it even harder for them to come forward. A survey of 527 respondents in 7 Indian cities found that 19% of respondents had experienced sexual misconduct at workplace. In Bangalore 51% of respondents, whereas in Delhi and Hyderabad, 31% and 28% respectively recorded being sexually harassed.[20]

[18]Pradeesh Chandran*, 17% Women Face Sexual Harassment at Workplace: Oxfam*, Business Standard (Jan. 20, 2013, 06:29 AM), https://www.business-standard.com/2013/01/20/17%-women-face-sexual-harassment-at-workplace-oxfam

[19] *Highlights of Women's earnings in 2021*, U.S. Bureau of Labor Statistics (Mar., 2023), https://www.bls.gov/2023/03/highlights-of-women's-earnings-in-2021

[20] Disha Kumar, *Sexual Harassment of Males*, Lawctopus (Sept. 30, 2024), https://www.lawctopus.com/2024/09/30/sexual-harassment-of-males

## EFFECTS OF SEXUAL HARASSMENT AT WORKPLACE

Experiences of sexual harassment may vary from person to person depending upon its severity and circumstances. It is crucial to avoid blaming the victim for the harassment they experienced. It has several significant consequences on the psychology of the victim and can lead to a tense and unproductive working environment.

Sexual harassment leads to a decrease in productivity by creating a toxic working environment. This in turn creates a sense of job dissatisfaction and disengagement within the victims as a result they get distracted and neglect their responsibilities towards the office work. It is not only the victims who get affected but the productivity and efficiency of the whole office goes down which deteriorates its reputation. This discourages capable candidates to join the office. The EEOC in a survey found that 58% of respondents who witnessed "unfairness" in the work place would, to some degree, discourage potential employees from joining the company.[21] It does not only affect the workplace relationships but also have impact on the personal life of the victim, outside the work.

## EFFECTS ON MENTAL HEALTH

Sexual harassment threatens emotional and mental health of the victim. Most of the times, harassment is narrowly equated with physical misconduct, overlooking the profound impact it has on victim's mental health. This issue is undervalued and not given enough attention it deserves. Individuals who have been sexually harassed suffers from Depression, Anxiety, and Emotional issues such as Panic Attacks and when endured for a long period without taking any action to resolve the harassment and can exacerbate the above-mentioned conditions. Victims also suffer from Post- Traumatic Stress Disorder (PTSD). Additionally, the victim can also be subjected to physiological symptoms like headache, muscle aches, high blood pressure and if left untreated can affect the internal organs. Studies show that 35-70% of victims experience

[21] Everfi Content Team, *How Does Sexual Harassment Affect the Workplace?* , Everfi, https://everfi.com/how-does-sexual-harassment-affect-the-workplace

major depressive disorder and post-traumatic stress disorder PTSD). These conditions often result from trauma and societal stigma, which hinder recovery.[22]

## VIOLATION OF FUNDAMENTAL RIGHTS

Fundamental rights are basic human rights which are equally granted to every citizen of India by the Indian constitution and must be protected by the law. This heinous crime of sexual harassment infringes victim's fundamental Right to Equality before Law and Equal Protection of Law (**Article 14**)[23], Right to practice any Profession, or to carry out any Occupation, Trade or Business [**Article 19(1)(g)**][24], and the Right to live with Dignity (**Article 21**).[25]

The supreme court of India in the case of **Vishka vs. State of Rajasthan (1997)** has held that the right to practice a profession under article 19(1)(g) includes the right to work in a safe environment free from sexual harassment.[26]

## DEVELOPMENT OF SEXUAL HARASSMENT LAWS IN INDIA

The crime of sexual harassment has been prevalent in Indian society from centuries, but it has been brought into limelight much later. The laws on sexual harassment are in the stage of infancy and have not been developed in accordance to the needs of current societal situations.

Sexual harassment was for the very first time recognized by the Supreme Court of India in its landmark judgment of **Vishaka and Ors. Vs. State of Rajasthan and Ors.** [27](1997). In this case, Vishaka and other women groups filed a Public Interest Litigation (PIL) against the State of Rajasthan and Union of India for enforcing the Fundamental Rights of working women under Article 14, 19and 21 of the Constitution of India. This petition acted as an extension for the case of **Bhanwari Devi** (1992), a Dalit woman, who was a social worker employed under the Rural Development Program of the Government of Rajasthan was gang raped for stopping a child marriage. [28]

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[22] Meghna Ranganathan, *Measurement and Prevalence of Sexual Harassment in low-and Middle-Income Countries: A Systematic Review and Meta-Analysis,* BMJ Open, https://bmjopen.bmj.com/measurement-and-prevalence-of-sexual-haeassment-in-low-and-middle-income-countries-a-systematic-review-and-meta-analysis

[23] INDIAN CONST. art. 14.

[24] INDIAN CONST. art. 19, cl. 1(g).

[25] INDIAN CONST. art.21.

[26] Nidhi Bajaj, *Article 19 of the Indian Constitution*, Blog iPleaders (May 3, 2024), https://blog.ipleaders.in/2024/05/03/article-19-of-the-indian-constitution

[27] Vishaka & Ors. V. State of Rajasthan & Ors., (1997) 6 SCC 241 (India).

[28] Malavika Rajkumar, *The History Behind Sexual Harassment at the Workplace Law,* Nyaaya (Mar. 9, 2022), https://nyaaya.org/2022/03/09/the-history-behind-sexual-harassment-at-the-workplace-law

The Supreme Court in the case of Vishaka framed guidelines and issued directions to the Union of India for effective provisions to combat sexual harassment at workplace. The Supreme Court referred the General Recommendation under **Article 11 of the CEDAW**. According to Supreme Court of India sexual harassment includes such unwelcome behavior (whether directly or by implication) as:

(i) Physical contact or advances
(ii) A demand or request for sexual favors
(iii) Sexually colored remarks
(iv) Showing pornography
(v) Any other unwelcome physical, verbal or non- verbal conduct of sexual nature [29]

The Supreme Court referred to **section 2(d) of Protection of Human Rights Act, 1993** and made it compulsory for all the employers, institutions and other responsible persons to follow certain guidelines in order to protect the women from the acts of sexual harassment.

Following are the guidelines laid down by the court, which are also known as the Vishaka guidelines:

(i) It is the duty of the employers and all the people responsible to prevent such acts from happening and to provide for a suitable procedure for conciliation, prosecution and all other necessary steps as may be required.
(ii) The court further provides for taking the preventive steps in order to avoid such mis happenings against any of the employees and it is applicable to all employers be it private or public.
(iii) Appropriate conditions of work must be provided to the employees, that includes the conditions of work, health facilities, etc. and to make sure that there is no unsafe environment for the women at the workplace.
(iv) Express prohibition of sexual harassment should be notified, published and circulated in appropriate ways.
(v) The rules/ regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.[30]

[29] CHAKRABARTI, *supra note* 1, at 239.
[30] Sai Gayatri, *Vishaka & Ors. Vs. State of Rajasthan & Ors. (1997)*, Blog iPleaders (Sept.16, 2024), https://blog.ipleaders.in/2024/09/16/vishaka-&-ors.-vs.-state-of-rajasthan-&-ors.-(1997)

Whether or not the conduct of the harasser constitutes as an offence under law or breaches the conduct rules, an appropriate complaint mechanism should be created in the employer's institution to deal with the complaint made by the victim. Such mechanism should have time bound treatment of the victim's complaint. A complaint committee with a special counsellor and other good services should be formed and its confidentiality should be maintained. The committee should be chaired by a woman and not less than half of its members should be women. The competent NGO should be included in such committee. The committee should make an annual report to the govt. including the actions taken by it.[31]

There were no concrete statutory provisions that directly addressed the issue of sexual harassment at workplace, except the Indian Penal Code, 1860, before the implementation of the POSH law. The only sections which are vaguely associated with sexual harassment are:

- **SECTION 354** [32](Outraging the modesty of a woman)
- **SECTION 509** [33](Insulting the modesty of a woman)

**PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.**

The guidelines given in Vishaka case became the basis for introduction of the sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013. The POSH Act is a legislation enacted by the govt. of India in 2013 to prevent and address incidents of sexual harassment faced by women at their workplace and provide a mechanism for redressal of complaints related to sexual harassment. The act provides a clear definition of sexual harassment which includes unwelcome acts such as physical contact and sexual advances, a demand for sexual favors, making sexually colored remarks and showing pornography and any other verbal or non-verbal conduct of a sexual nature. The act applies to both formal and informal sector and all work places including public, private and NGOs.

Key Provisions of the act:

- **INTERNAL COMPLAINTS COMMITTEE**: The act makes it mandatory for employers to constitute an **Internal Complaints Committee** (ICC) at each workplace

[31] R.K. Bag, *Domestic Violence and Crime Against Women*, 39 J. Indian L. Inst. 259, 259-75 & 369 (1997).
[32] Indian Penal Code, 1860, § 354.
[33] Indian Penal Code, 1860, § 509.

with 10 or more members who would be responsible for addressing sexual harassment complaints.

- **LOCAL COMMITTEE**: In cases where the workplace has less than 10 employees or in certain circumstances does not have an ICC, the district officer shall constitute a local committee to receive and redress complaints.
- **COMPLAINT PROCEDURE**: The act lays down a specific procedure for filing complaints, conducting inquiries and resolving cases. It ensures confidentiality and timely resolution of complaints.
- **PENALTIES**: If a person is found guilty, the act provides for penalties, which may include a monetary fine or termination of employment, depending on the severity of the offense.[34]

The POSH Act has widened the definition of workplace and introduced the concept of "extended workplace" by including any place visited by the employee during the course of employment, transportation provided by the employer for commuting to and from the place of employment whereas the Vishaka guidelines were confined to the traditional office setup.

According to the data of the National Commission of Women (NCW), incidences of sexual harassment have been increasing since after the POSH Act, 2013. 336 complaints of sexual harassment at workplace were registered in NCW till December 2014 as compared to 249 and 167 registered cases in 2013 and 2012 respectively. It is evident from the above-mentioned data that no major changes have been seen in the cases of sexual harassment rather it has been on rise. Even after the implementation of a full-fledged law on sexual harassment, there are certain loopholes which are overlooked by the govt. and require an urgent attention of the concerned authorities.

**STUDENTS – EASY CATCH**

The act of Sexual harassment in colleges and universities can be evident from the increasing incidents of 'eve-teasing', rape, and even murder committed in all educational institutions across the country. Usually, the incidences of sexual harassment increase at the time of festivals, college fests and other occasions. Just for the sake of entertainment, students pass verbal comments and crack inappropriate jokes which causes severe impact on the mental

[34] *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*, Department of Women and Child Development, Government of NCT of Delhi, https://wcd.delhi.gov.in/sexual-harassment-of-women-at-workplace-prevention-prohibition-and-redressal-act-2013

health of the victim as they feel sexually harassed and this can further lead to grave consequences, extending up to committing suicide.

Years ago, medical students at Nil Ratan Sarkar Medical College Hospital went on a strike protesting against the incident of the physical harassment of female students. Staff members from the same hospital harassed the students.[35]

Some teachers exploit their power or position to ask for sexual favors from the students, knowing the fact that students require their guidance in their academic journey. This particularly holds true for research scholars as they need their support for the progress in research work but teachers take advantage of the situation. In a case, where a girl was pursuing her doctorate in physical education in a university near Kolkata had been sexually abused by her research guide over a period of time. After completing her research, she lodged a written complaint with the university authorities and also said "I dared not protest during my research as the accused was my guide and could temper with my results".[36]

Strangers or outsiders who roam around the college / hostel campus also pose a threat to students. In a case, girls of Gargi Hostel in Burdwan University's Tara Bagh campus were under the constant fear of sexual harassment by local youths and strangers. The louts made obscene gestures before the girls and tried to touch them asleep in the ground floor through the window. In spite of the constant warnings by the university authorities, the harassers kept on doing the same.[37]

Sexual harassment is not only restricted to college students; even young school children are subjected to such ordeals. These vulnerable students may encounter harassment from their teachers, private tutors and even from van drivers, despite their youth and innocence. According to National crime Records Bureau (NCRB), 109 children are sexually abused every day in India in 2018[38]. Instead of ensuring their safety, these people exploit their positions to harass students. The frequency of such incidents underscores the urgent need for stringent measures to address this pervasive problem and ensure a safe environment for students.

The government made a pivotal move in protecting minor children from exploitation and abuse by implementing the Prevention of Children from Sexual offences **(POCSO) Act, 2012**. It

[35] CHAKRABARTI, *supra note* 1, at 257.
[36] *Id*. at 255.
[37] *Id*. at 257.
[38] *National Crime Records Bureau*, Government of India, Ministry of Home Affairs, https://ncrb.gov.in

provides a robust framework for safeguarding children under the age of 18, ensuring their physical and emotional safety.

**TEACHERS: NOT SPARED EITHER**

Ms. Nisha Pandey, a teacher of English at Lucknow University sued a male colleague for sexual harassment and slander. The harassment took place when on an invitation card for the inauguration of a Lucknow University website, G.S. Bhaduria, a Lecturer in Ancient Indian History and Archeology, scribbled that Pandey was a prostitute and a "Nagar Badhu".[39]

**SEXUAL HARASSMENT BY CO-WORKERS**

In Vivekananda college in Behala, a woman typist-cum-clerk lodged a complaint with the police against the head clerk for sexually harassing her. She alleged that the accused would detain her in office on the pretext of work and make obscene proposals. On one such occasion, he molested her in his office.[40]

The notion that colleges and academic institutions are no longer safe is supported by various cases of sexual harassment involving students, teachers and staff members. The above-mentioned cases revealed only the tip of the iceberg and highlighted the complex intersection of power dynamics and patriarchy, where the harasser at different levels collaborate to perpetrate crime against their juniors and colleagues.

**CHALLENGING STEREOTYPES: MEN AS VICTIMS OF HARASSMENT**

In Indian society, even today, male sexual harassment is neither acknowledged nor taken seriously. Victims are often dismissed or ridiculed, with society perceiving them as weak or feminine. This stigma leads to a pervasive disbelief, forcing many male survivors to remain silent about their experiences. They refrain from sharing their ordeal with family, friends or colleagues, fearing judgment and shame. As a result, these incidents become deeply buried, unspoken secrets, perpetuating a culture that mishandles such critical issues. According to a National Commission for Women study from 2022, 3000 cases of sexual assault on men wee reported in India. This marks a significant increase above the 2500 cases documented in 2021. From the above information available, it can be seen that, how damaging it is for the mental

[39] CHAKRABARTI, *supra note* 1, at 258-259.
[40] *Id.* at 259.

health of those who confronts such incidents. A poll conducted by the Economic Times revealed that 29-43% of those surveyed had been harassed by the female workers.

- 51% men reported experiencing sexual harassment priorate the age of 18.
- 25.3% between 11 -17 years of age faced victimization.
- 26% faced at the age of 10 or younger.[41]

## LEGAL PROVISIONS

If we discuss the legal provisions in India for adult males who experience sexual harassment, it becomes evident that there are no specific laws to penalize offenders who perpetrate such acts against men. Despite the rising statistics highlighting an increase in cases of male sexual harassment, there has been no substantial efforts to introduce dedicated legal frameworks addressing this issue.

This lack of legislation underscores the pressing need for India to recognise and act upon the gravity of the situation. Although the Indian Penal Code (IPC) has undergone amendments overtime, no significant changes have been introduced to incorporate provisions specially targeting the harassment faced by adult males. This glaring omission emphasises the urgent requirement for gender-neutral laws that ensure Justice and Protection for all individuals, irrespective of gender.

## CASE STUDY

Vijay Nair, a Mumbai based entrepreneur and founder of Only Much Louder (OML) faced an incident of sexual harassment via cyberstalking. He faced the ordeal for months, which started with someone anonymously posting a sexually explicit tweet on his twitter profile. After that, a series of sexually explicit messages were sent to him by the cyber stalker over the WhatsApp and email, many of which were also copied to Nair's friends and acquaintances. When he finally unmasked the identity of his stalker, it was discovered that the stalker in question was a woman whom Nair was acquainted with.[42]

The cyberstalking incident like that of Nair is not an isolated case of a man facing sexual harassment at the hands of a woman. Reports of such incidents, where men are victimized and

[41] KUMAR, *supra note* 17.
[42] Devika Agarwal, *Vijay Nair Sexual Harassment Case: Rising Incidents Against Men Emphasise Need for Gender-Neutral Laws in India*, Firstpost (May 17, 2017, 05:24:07 PM), https://www.firstpost.com/2017/05/17/vijay-nair-sexual-harassment-case-rising-incidents-against-men-emphasise-need-for-gender-neutral-laws-in-india

women are perpetrators, are on the rise. This growing trend raises an important question: should India adopt gender-neutral sexual harassment laws?

One more horrifying incident was reported in Faridabad, Haryana where four people raped a 23-years old man at the OYO guest home, after giving him an illicit substance in the form of a cold drink after which he passed out. According to the victim, he saved his life by jumping from the first floor of OYO and then reported it to the police. He claimed that instead of filing a complaint and taking action against the accused, the police threatened him. Later, when the situation was reported in the media, the police quickly filed the case.[43]

## ADDRESSING SEXUAL HARASSMENT ACROSS PROFESSIONS

In Indian society, there exists a longstanding conventional perception that sexual harassment is predominantly confined to the corporate world, where victims, often constrained by professional hierarchies, silently endure such incidents. However, if we navigate the dynamics of contemporary society, it becomes evident that sexual harassment is a pervasive issue that transcends boundaries, infiltrating every sector. Even within the judiciary, which is responsible to uphold justice, the justice providers are not immune to these violations, revealing a deeply rooted societal challenge that demands urgent attention.

## STATISTICS AND DATA

Below is the comparison of approximate data on sexual harassment faced by people of different professions in the year of 2021 and 2024:

| PROFESSIONS | YEAR 2021 (IN %) | YEAR 2024 (IN %) |
|---|---|---|
| NURSING | 50 | 58 |
| CONSTRUCTION | 25 | 30 |
| IT SECTOR | 35 | 40 |
| JUDICIARY | 20 | 25 |
| JOURNALISM | 40 | 45 |
| TEACHERS | 25 | 32 |
| POLICE | 15 | 20 |

[43] KUMAR, *supra note* 17.

Looking at the difference in the percentage increase of number of cases of sexual harassment from year 2021 to 2024, it can be concluded that there has been significant rise in the figures even after the implementation of new laws of Bhartiya Nyaya Sanhita, 2023.[44]

## CASE STUDIES

### *JUDICIARY*

"In a case that might be symptomatic of the depth to which the rot of sexual harassment and abuse runs un the system, a judge says it was naïve of her to think she will impart justice when she has been made a beggar for justice herself."

In December, 2023, a woman Judge in Uttar Pradesh wrote a letter to the Chief Justice of India (CJI), Dr D.Y. Chandrachud, in which she alleged the inaction over her complaint of sexual harassment against a District Judge. In her letter, she had asked for permission from the CJI to "End her life" because of the abuse and harassment she faced on a part of the District Judge.

Expressing her despair, she wrote: "No one listens, no one bothers. If you complain, you will be tortured. Be submissive. And, when I mean no one listens, that includes the Supreme Court. You will get eight seconds of hearing, an insult and a threat to impose costs."

She alleged that a complaint had been lodged with the Chief Justice of the Allahabad High Court in 2022 but no action was taken. Later, she filed a complaint with the Internal Complaints Committee (ICC) of the High Court in July, 2023. On December 13, 2023, Supreme Court dismissed her petition on the ground that "Since the Internal Complaints Committee is already in seisin of the matter and a resolution is already passed which is pending approval of the Chief Justice of the Allahabad High Court, we see no reason to entertain this writ petition under Article 23 of the Constitution."

After this the letter came to the light and CJI took note of the letter and called for a report from the Allahabad High Court.[45]

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[44] *Report on Workplace Harassment in Nursing*, Indian Nursing Council, https://www.indiannursingcouncil.org; *Women in Construction: A Study on Harassment*, Habitat India, https://habitatindia.org; *Diversity and Inclusion Report: IT Sector Analysis*, NASSCOM, https://nasscom.in; *Report on Women in the Judiciary*, Bar Council of India, https://www.barcouncilofindia.org; *Harassment in Journalism*, Freedom House, https://freedomhouse.org; *Harassment in Educational Institutions*, Government of India, Ministry of Education, https://www.education.gov.in*; Gender Issues in the Police Force*, Government of India, Ministry of Home Affairs, https://www.mha.gov.in

[45] *CJI Takes Note of Letter by Women Judge Seeking 'Permission to End Life' in Absence of Relief Against Sexual Harassment by District Judge*, The Leaflet, https://theleaflet.in/cji-takes-note-of-letter-by-women-judge-seeking-permission-to-end-life-in-absence-of-relief-against-sexual-harassment-by-district-judge

***POLICE***

The Rupan Deol Bajaj vs KPS Gill was one of the most high-profile legal cases in India where a Director General of Police, Punjab, was held guilty of the charges of molestation. Rupan Deol was an IAS officer belonging to the Punjab cadre. She filed a complaint against KPS Gill, saying that he had molested her modesty by petting her posterior during a party.

On 20th August, 1988, the High Court of Punjab and Haryana upheld Gill's conviction under section 354 and section 509 for his actions against Rupan Deol.[46]

***JOURNALISM***

A young Journalist was sexually harassed by high-profile Editor-in-Chief during an event organised by him at Goa in November, 2013. The victim suffered at the hands of her super boss twice in the hotel lift. She reported the incident to her immediate boss after about 10 days of the event. As the case involved high-profile perpetrator, there was huge media coverage of the incident and public outcry. The victim resigned from the organisation.[47]

**SUGGESTIONS**

Sexual harassment has been an issue since ancient times, but it was not properly addressed until the introduction of the Vishaka guidelines in 1997 and the Prevention of Sexual Harassment (POSH) Act, 2013. These legal frameworks were the first to discuss and give importance to the problem, making it a punishable offense. The society kept on evolving and even after such a long extent of time when the Bhartiya Nyaya Sanhita (BNS) was introduced in 2023, still no significant changes to the provisions or punishment related to sexual harassment were brought. The scope of its definition is still very narrow. It should include all forms of sexual harassment and in every spheres.

One critical aspect that needs urgent attention is the inclusion of male victims of sexual harassment. The current laws need to be gender-neutral and they should include the term "person" in place of "Man/woman", to ensure that men who face harassment are also provided with equal protection and punishment under the law. This is a gap in our legal system that needs immediate rectification. Moreover, there is still a problem with how harassment cases are handled by authorities. Police and societal pressure often discourage victims from filing FIRs

[46] *Rupan Deol Bajaj Case*, Wikipedia (Nov. 17, 2024), https://en.m.wikipedia.org/2024/11/17/rupan-deol-bajaj-case

[47] Shweta Jha, *Mentor as Tormentor: A Case of Sexual Harassment at a Media Company*, SSRN (Mar. 24, 2016), https://papers.ssrn.com/2016/03/24/mentor-as-tormentor-a-case-of-sexual-harassment-at-a-media-company

or making complaints. This often results in the victim being silenced or ignored. It is essential that victims' voices be heard and their complaints given proper attention. There should be timely FIR registration and efficient proceedings to ensure justice.

Additionally, there is a pressing need to establish an agency for systematically collecting and analysing statistical data related to reported cases, spanning from grassroots to higher level. Furthermore, the agency should track the timeframes within which justice is delivered, including how many years it takes to resolve cases and bring them to closure. Currently, India lacks a centralized and reliable system for such comprehensive statistical reporting. Even, no robust mechanism exists to gather data on reported cases of male sexual harassment. Therefore, there should be a transparent and accountable commission to separately record the cases for male sexual harassment.

The justice system should also consider the mental condition of the victim along with the physical harassment during legal proceedings. Considering this, the court should award compensation on the basis of relative degree of mental agony suffered by the victim. It is crucial to recognise the developed countries have already made significant strides by expanding their sexual harassment laws to include both men and women and ensuring better provisions. Unfortunately, this is still lacking in our country.

## CONCLUSION

The evolving role of women in the workforce has highlighted the increasing prevalence of sexual harassment, which affects not only women but also men, with societal pressure deterring many from reporting such incidents. Despite the legal frameworks in India, such as POSH Act, 2013, underreporting remains a significant challenge due to societal stigmas and fear of reputational damage. Sexual harassment impacts both physical and mental health, often leading victims to leave their jobs and facing violations of their fundamental rights. Furthermore, this issue is not confined to the workplace but extends to educational institutions, with students also becoming victims. As sexual harassment manifests across various fields, it underscores the need for comprehensive awareness, stronger enforcement of laws, and a societal shift toward eliminating such harmful behaviours.

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