

## Sexual Harassment and Indian Law: An Overview

**Prof. (Dr.) Pooja Deshmukh**

Associate Professor and Research coordinator

Mahatma Gandhi Institute of Management

N-6, CIDCO, Aurangabad

Maharashtra

### Abstract:

*We all know the wonderful & important role a woman plays in a traditional Indian family. She is a responsible homemaker and a soft-hearted hard worker. She is also the 21st-century woman; independent, confident & making successful forward strides in many fields. But when there are so many crimes against women happening daily, so much gender inequality, sexual harassment and hostile environment at her workplace. Sexual harassment has been recognized as a serious problem in the literature over the past 30 years. Sometimes people in authority misuse their power to harass women. There are many women who have faced sexual harassment at some point in time, maybe in the office or on her way to work. They're forced to keep quiet because if they make a noise about it they are subject to worse crimes like assault (grievous, indecent, etc.) and rape, acid attack, etc or threatening them to remove them from the organization, especially in India. Thus it's the employers' foremost responsibility and ours too, to develop absolute intolerance against sexual harassment at the workplace and elsewhere respectively. Does India really want to give her the freedom of equality & safeguard her fundamental rights? Or just expect her to compromise, stay down & back up like a woman is expected of in India? In this paper, I review the existing research surrounding the phenomenon of sexual*

*harassment, paying particular attention to factors of relevance for understanding perpetrators of sexual harassment and try to understand the Indian law against the sexual harassments.*

**Key words:** *Sexual Harassment, Women, Workplace, Indian Law*

### I. Introduction:

Sexual harassment is considered as an employment discrimination among the men and women that consists of verbal and physical abuse of sexual nature at the workplace (Boland, 2005). In current, sexual harassment in the workplace is a new management issue that can be seen in the organization. Generally, women are affected by the sexual harassment through Lewd remarks, touching, wolf-whistles etc (Naveed, Tharani & Alwani, 2010). It creates discriminatory, unfair, thriving in an atmosphere of threat, terror, and reprisal to the women at work. In addition, it is also included all an expressions of male power over women that maintain patriarchic relations. Men use sexual harassment for reminding women about their weakness and dominated status.

At the same time, these patriarchic values and attitudes of men, as well as women, create the greatest challenge in preventing and solving sexual harassment from the society. In present, sexual harassment is an

illegal practice, which is endemic and often hidden in the organizations. It is easily tackled by the management within the organization by taking corrective actions and making an appropriate policy related to sexual discrimination in employment. It is not a good activity at the workplace, because a workplace is a place where employees build a strong relationship with an employer. Thus, it is a current management issue of the organization that makes the ineffective relationship between employers and employees.

Along with this, sexual harassment is a significant issue because of the change in attitudes of all the employees, colleagues, friends, administrators, employers and lawmakers. The sexual harassment takes place when any unwelcome sexually determined behavior exists in the organization. These behaviors include physical contact, a request for sexual favors, sexually colored remarks, expressing pornography and any verbal or non-verbal behavior of a sexual nature. In addition, it is a significant issue of the current organizational practices that affect the behavior of the organizational people. It also has the great impact on the productivity of the employees, because it de-motivates the people who are sexually harassed by another one.

At the same time, this issue must be solved by the management through effective policies and procedures that can protect the rights of the employees. Sexual harassment diverts the mind of women from the work that reduces their productivity. Reduction in productivity directly affects the profitability of the organization that creates problems in the growth of the company (Naveed, Tharani & Alwani, 2010). In the current, a supervisor requests to his junior for sexual

favors in return for promotion for other monetary benefits. The supervisor may also threaten if anyone refuses for his non-corporation. Thus, the management of the organization must inquire about the private lives of employees to prevent the employees from the sexual harassment.

This issue creates difficulties for the companies by the negative exposure and the publicity in the industry. It also increases absenteeism and reduces productivity, efficiency, and employees moral. So, this is a significant issue for the organization that must be solved. The people unwelcome and behave in the improper way on the basis of sexual nature. Sexual harassment is considered as an illegal activity in the organizational and legal context. According to an Equal Employment Opportunity Commission (EEOC), it is an unlawful activity that someone harasses a person or an employee because of his/her sex. Sexual harassment includes both verbal and physical harassment of a sexual nature.

## **II. Objective:**

1. To understand the meaning of sexual harassment.
2. To know the things included in sexual harassment.
3. To study the most popular sexual harassment cases.
4. To study the Indian Law for sexual harassment.

## **III. Research Methodology:**

Research is completely based on secondary data, sourced from different articles, research papers, government circulars different websites, and newspapers. As this is an exploratory study, care was taken to

mention all sources where data has been collected.

#### **IV. What is sexual harassment?**

Sexual harassment is unwelcome sexual behavior that's offensive, humiliating or intimidating. It can be written, verbal or physical, and can happen in person or online. Both men and women can be the victims of sexual harassment. When it happens at the workplace, school, colleges or university, and even in public places, it may amount to sex discrimination.

Unwelcome Behavior is the critical word. Unwelcome does not mean "involuntary." A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person, in fact, welcomed a request for a date, sex-oriented comment, or joke depends on all the circumstances. Source: Preventing Sexual Harassment (BNA Communications, Inc.) SDC IP .73 1992 manual

#### **V. Sexual harassment includes many things:**

- Actual or attempted rape or sexual assault.
- Unwanted pressure for sexual favors.
- Unwanted deliberate touching, leaning over, cornering, or pinching.
- Unwanted sexual looks or gestures.
- Unwanted letters, telephone calls, or materials of a sexual nature.
- Unwanted pressure for dates.
- Unwanted sexual teasing, jokes, remarks, or questions.
- Referring to an adult as a girl, hunk, doll, babe, or honey.

- Whistling at someone.
- Cat calls.
- Sexual comments.
- Turning work discussions to sexual topics.
- Sexual innuendos or stories.
- Asking about sexual fantasies, preferences, or history.
- Personal questions about social or sexual life.
- Sexual comments about a person's clothing, anatomy, or looks.
- Kissing sounds, howling, and smacking lips.
- Telling lies or spreading rumors about a person's personal sex life.
- Neck massage.
- Touching an employee's clothing, hair, or body.
- Giving personal gifts.
- Hanging around a person.
- Hugging, kissing, patting, or stroking.
- Touching or rubbing oneself sexually around another person.
- Standing close or brushing up against a person.
- Looking a person up and down (elevator eyes).
- Staring at someone.
- Sexually suggestive signals.
- Facial expressions, winking,
- Throwing kisses, or licking lips.
- Making sexual gestures with hands or through body movements.

#### **VI. Some most popular examples of sexual harassments cases in India:**

- **Phaneesh Murthy**

In 2002, Phaneesh Murthy, a director with Infosys and one of the software major's highest-paid employees then, quit following sexual harassment allegations made by his executive secretary. Murthy and Reka Maximovitch, the complainant, reached an out-of-court settlement, with the latter being paid Rs. 1.915 crores. During his next period at iGate, another software services firm, he was again accused of sexual harassment. In 2013, a junior employee, with whom he allegedly had an affair in the US, sued him for charges of sexual harassment. iGate removed Murthy as CEO and president as he had not reported his relationship with the said employee. However, the company denied finding any instances of the sexual misconduct.

- **Air India**

In 2012, an employee working at a restaurant at the Indira Gandhi International Airport, New Delhi, filed a case against a senior Air India official, accusing him of sexually harassing her. The employee worked with a firm to which Air India had outsourced work. According to the victim woman, the official showed her porn clips, nude pictures, and made physical advances. While the police launched a probe, the woman said her complaint to an assistant general manager at Air India was ignored.

More recently, in September last year, a police complaint was filed against Binoy Jacob, vice-president, Air India SATS Airports Services, Thiruvananthapuram, for sexual harassment of a subordinate. The complaint said Jacob used sexually explicit language while talking with women employees.

- **Tarun Tejpal**

In November 2013, Tarun Tejpal, a senior journalist, and editor-in-chief of Tehelka magazine was accused of raping a young female staffer in an elevator in a Goa hotel. The incident took place during the magazine's annual conclave, Think fest. The Goa police immediately charged Tejpal with rape, sexual harassment, taking advantage of his official position and committing rape on a woman in his custody. Tejpal spent six months in jail before the Supreme Court granted him bail. Soon after his arrest, Shoma Choudhary, the then managing director of Tehelka had come under criticism for her ineffective handling of the complaint and for trying to hush up the matter. The trial in the case is yet to begin.

- **AK Ganguly**

In December 2013, AK Ganguly, a Supreme Court judge was accused by an intern of sexually harassing her at a hotel in New Delhi. The intern first wrote about the incident in a blog, following which the then chief justice of India set up a fact-finding panel to ascertain the veracity of the former intern's allegations.

A three-judge committee of the Supreme Court then indicted Ganguly of committing an "act of unwelcome behavior" and "conduct of sexual nature." In July 2014, however, India's home ministry said there was no case against him after the Delhi police said there wasn't enough evidence to lodge an FIR against Ganguly.

- **Doordarshan**

An employee of India's public-service television broadcaster, Doordarshan, had alleged that her supervisor in Patna had sexually harassed her. She alleged that the supervisor passed obscene comments, made

physical advances, and harassed her. She officially lodged a complaint in April 2015, and while her allegations were found to be true after an internal probe, no action was taken. She was transferred to another Doordarshan office. Subsequently, she approached the police but a case was not filed.

- **All India Radio**

All India Radio (AIR), the country's national radio broadcaster, was in the news in 2013 when women employees complained of sexual harassment and exploitation by senior officials. Months later, an investigation confirmed charges of sexual misconduct. "Casual presenters at FM Gold and FM Rainbow seem to be in a vulnerable position because of the casual nature of their engagement," the ministry of information and broadcast said in its report. The report directed AIR to install closed-circuit cameras in offices and subject staff to surprise inspections.

- **Greenpeace**

In 2015, a woman employee at Greenpeace India said she had had to leave her job in 2013 due to sexual harassment and rape by a colleague. Despite complaints to the human resources department, no action was taken, though others, too, had complained against the same person. A member of Greenpeace's internal complaints committee (ICC) told the Times of India in 2015 that a suggestion to oust the offender was "overturned" by the executive director. Two years since, no action has been taken.

- **Wipro**

India's third-largest software services firm was dragged to court by an employee who

alleged that she was being discriminated against when it came to her salary and that her manager had forced her to have an alleged affair. Shreya Ukil, who worked for Wipro in London, filed a GBP1.2-million lawsuit in October 2015. Wipro contested the case and, in May 2016, said the UK Employment Tribunal had ruled in its favor. "Wipro Limited is pleased that the UK Employment Tribunal has upheld the dismissal of the complainant from the services of the organization as appropriate and rejected claims of adverse cultural attitude towards women in the organization," a company spokesperson had told the Economic Times newspaper.

- **RK Pachauri**

In February 2015, RK Pachauri, the then director general of The Energy and Resources Institute (TERI), was accused of sexually harassing a researcher at the organization since September 2013.

The 74-year-old Pachauri, who was the former chairman of the Nobel prize-winning Intergovernmental Panel of Climate Change (IPCC), denied the allegations. He claimed his computer and phone were hacked, but the police rubbished this. A week after the first complaint, another woman spoke up alleging sexual harassment by Pachauri.

In March 2016, the Delhi police charged the scientist with sexual harassment, assault or use of criminal force on a woman with intent to disrobe, stalking and gesturing, or acting with the intension of insulting the modesty of a woman. TERI first appointed Pachauri as executive vice-chairman despite the allegations, but eventually dismissed him from the institution.

- **Bhanwari Devi**



Bhanwari Devi worked as a 'saathin', (Auxiliary Nurse Midwifery) a voluntary worker with the government of Rajasthan, fighting against issues such as child marriage in her village. She is Dalit and her attempt to stop a child marriage involving a baby earned her the ire of the 'higher caste' villagers who decided to teach her a lesson. They gang raped her and attacked her husband. The attack took place on 22 September 1992

## **VII. Indian Law for sexual harassment:**

What law says?

1. IPC Section 294- The offender could be jailed up to 3 months, or be fined, or both (Singing lewd songs directed by at women in public space)
2. IPC Section- 354 (A) The accused can either face jail time ranging 1-3 years of fine or both (Demanding sexual favors despite indication of disinterest)
3. IPC Section 354 (D)- The man can face jail term ranging 3-5 years coupled with fine (Following someone with or without their knowledge.)
4. IPC Section 503- The man can face jail time of 2 years of fine or both (If Women's clear refusal to someone's sexual advances is met by threats to harm her physically or her reputation and property.)
5. IPC Section 354 (C) The man faces jail term regarding from 1-3 years in addition to fine. If the man convicted the second time, then he faces jail term ranging 3-7 years along with fine.(Watching, capturing or sharing images of as women engaging in a

private act without her consent is voyeurism)

6. FIR (first information report) preferably with the local police station (In an event that you are faced with an act of sexual harassment.)
7. Sexual Harassment of Women at workplace Act, 2013 (A senior colleague demanding sexual favors in exchange for work benefits-promotion or salary hike)
8. IPC Section 499- The Punishment may include jail time up to 2 years or fine or both (Morphing pictures of a women and sharing them with intent to harass and defame her.)
9. Sexual Harassment of Women at workplace Act, 2013- Any workplace with more than 10 employees should have internal complaint committee
10. Section 67 of IT Act- The man can face jail time of 2 years with a fine (Posting any obscene or defamatory material on a public online platform intending to harass a woman.)
11. According to the Sexual Harassment of Women at workplace Act, 2013- If women make a complaint about an act of act of sexual harassment, the inquiry has to be completed within 90 days.
12. IPC Section 509- The man can either faced jail time of 3 years and fine (Making sexually coloured remarks against a women in a public space)
13. IPC Section 354 (A)- The man can faced jail term which can may extend to 3 years (Making unwanted physical contact against a women's will.)
14. Sexual Harassment of Women at workplace Act, 2013, domestic help

is also covered (offender's home is her workplace)

15. IPC Section 509- . The man face jail time 3 years and fine (Abusing a women with sexually colored remarks on social media)
16. Sexual Harassment of Women at workplace Act, 2013- the committee may take action against the complainant in case of malicious complaints of false evidence. However, simply not being able to prove an allegation will not mean that is a false/ malicious complaint.

### **VIII. Constitution of VISHAKHA SAMITI:**

The Sexual Harassment at workplace Bill was passed by the Lok Sabha on 2 September 2012. It is now The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It defines sexual harassment as laid down by the Supreme Court in the Vishakha and others v State of Rajasthan (1997) case.

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps as per the Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384)

- a. Express prohibition of sexual harassment as defined above at the work place should be

notified, published and circulated in appropriate ways.

- b. 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.
- c. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- d. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

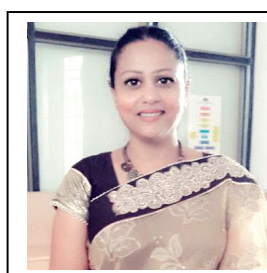
### **IX. Conclusion:**

The Sexual Harassment at the workplace is a universal problem. The Act had been formulated to protect the women from harassment at workplace, which has been recognized as an infringement of fundamental rights of a woman, under Article 19(1) (g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business". Though the Act which had come into force in 2013 with the intention of protecting the rights of women, certain provisions of the act which seems to be biased and violates the principles of natural justice need to be amended at the earliest.

## X. References:

1. Boland, M.L. (2005). *Sexual Harassment in the Workplace*. Sphinx Legal.
2. Borstorff, P. & Arlington, K. (2010). Academy of Legal, Ethical and Regulatory Issues. *Allied Academies International Conference*. 14 (1), 1-30.
3. Kaner, C. (2002). Prepared for the Association of Women in Computing Florida Institute of Technology. *Sexual Harassment in the Workplace*, 1-21.
4. Naveed, A., Tharani, A. & Alwani, N. (2010). Sexual Harassment At Work Place: Are You Safe? *J Ayub Med Coll Abbottabad*, 22 (3), 222-224.
5. Saguy, A.C. (2003). *What Is Sexual Harassment? From Capitol Hill to the Sorbonne*. London: University of California Press.
6. [http://www.iitg.ac.in/iitgicc/docs/Vis\\_haka\\_Guidelines.pdf](http://www.iitg.ac.in/iitgicc/docs/Vis_haka_Guidelines.pdf)
7. <http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>
8. <https://www.amarujala.com/news-archives/other-archives/vishakha-guidelines>

## AUTHOR(S) BIOGRAPHY



**Full Name** : Prof. (Dr.) Pooja Vasantrya Deshmukh  
**Post** : Associate Professor & Research Coordinator  
**Qualification** : B. H. M., B.Sc. M.B.A., Ph. D (Mgt Science)  
**Specialization** : Marketing Management

**Address & Contact Details** : P.No.27, Ramkrishna Godavari Society, Padegaon, Aurangabad, Nasik Highway  
 Mobile No.: 9881079394  
 Email: [pooja.deshmukh@gmail.com](mailto:pooja.deshmukh@gmail.com)

## Work Experience: (Academic)

Name of Employer	Designation	Nature of Post	From-To	Approval Date
MGM Institute of Management	Associate Professor	Regular	2014-till date	
Shreeyash Institute of Management	Associate Professor	Regular	2012-2014	23 Jan 13
Marathwada Institute of	Assistant	Regular	2009-2012	1 Feb 2010



Management and Research	Professor			
Jaywant Institute of Management and Research, Pune	Assistant Professor	Regular	2007-2009	26 July 07
Rajarshi Shahu Institute of Management, Aurangabad	Lecturer	Regular	2005-2007	25 April 06

### Work Experience: (Industry)

Name of Employer	Designation	From	To
Taj Residency, Aurangabad	Guest Relation Executive	Jan 2005	March 2005
Quality-Inn The Meadows	Asst. Manager Sales & Marketing	Feb 2004	Jan 2005
Hotel Ambassador Ajanta	Guest Relation Executive	June 2000	Jan 2004
Hotel President Park	Guest Relation Executive	June 1999	May 2000