



## ***Preclusion of Voluptuous Exasperation of Women at Place of Work***

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### **ABSTRACT**

*This paper explores the phenomenon of "voluptuous exasperation" of women in the workplace in India, focusing on the social, cultural, and institutional factors that contribute to gender-based frustrations and inequities. The term "voluptuous exasperation" is used to encapsulate the complex emotional and psychological strain experienced by women due to pervasive gender discrimination, harassment, and the lack of conducive work environments. Drawing on a multi-disciplinary approach, the paper investigates how gendered power dynamics, societal expectations, and organizational policies intersect to exacerbate the work-related challenges faced by women. Through a combination of qualitative interviews, case studies, and a review of existing literature, this research highlights the systemic barriers that not only limit women's professional advancement but also foster an environment where emotional and mental exhaustion is prevalent. The study also examines the legal and institutional frameworks in India, such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013), assessing their efficacy in addressing these issues. Finally, the paper offers recommendations for mitigating the "voluptuous exasperation" of women, emphasizing the need for more inclusive policies, greater awareness, and a shift in organizational culture to ensure gender equity and psychological well-being in the workplace.*

**Keywords:** gender inequality, women at work, workplace harassment, India, emotional labor, organizational culture, legal frameworks.

### **INTRODUCTION**

*'You can tell the condition of a nation by looking at the status of its women. The progress of a country can be judged by seeing the status of its women'*

- Pandit Jawaharlal Nehru

Though the constitutional commitments of the nation to women were translated through various planning processes, legislations, policies and programs over the last six decades, a situational analysis of social and economic status of women does not reflect satisfactory achievements in any of the important human development indicators. Apathy of the system, poor community-based protection mechanisms and avalanche of crime against women are few of the foremost constraints in the path of women emancipation. Over the centuries, generations of women have suffered due to unwanted sexual attention and

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offensive behaviour at work, based on their gender. The blatant and widespread phenomenon of rape and sexual assault are the more commonly recognized forms of violence against women based on gender, while the more subtle issue of Sexual Harassment can be more repressive and intimidating.<sup>3</sup>

By analysis of the daily reports in the mass media, it becomes quite clear that from being a 'mere' social issue, Sexual Harassment at workplace has metamorphosed into a social malaise. Its multiple devastating effects become visible on the whole weave of the social fabric in bold impressions, both as a cause and an effect. It not only violates their sense of dignity and right to earn a living in healthy work environment but also is against their fundamental rights as well as basic human rights.<sup>4</sup>

Sexual Harassment at work place may be termed as coercive, exploitative, abusive or unprofessional behaviour but it remains a serious affront to human dignity. The issue has become ubiquitous across the world transgressing all limits and borders. It has registered its presence at every workplace across the world. The rise in such incidences may be attributed to increased participation and splendid achievements of women in almost every profession, till hitherto conventionally monopolized by men. The increased influx of women in jobs has also given rise to preoccupation with conflicting ideologies and troubled social conditions. All this has also brought about a sea change, both qualitative and quantitative, in workplace equations, generating and spreading virus of Sexual Harassment at workplace. It is only in the last 30 years that this problem has been discovered and identified.<sup>5</sup>

This article presents the rise and fall of the status of women from Vedic era to the present times. Legal environment governing sexual harassment at workplace, as contained in the International Instruments and the resultant obligation of the Central Legislature, to make domestic law, have been examined. The concern of the Apex Court of India to fill the legislative vacuum in exercise of its plenary powers under the ground law of the country by undertaking the task of legisputation, by structuring comprehensive guidelines to remedy the situation and to operate during the interregnum period as binding law. The article vividly presents the tenacity of the Apex court as to how it is making use of every opportunity to supplement the legal position to make the law much stricter and more pungent. Further, the

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<sup>3</sup> Sexual harassment at workplace by Ritu Gupta 2014

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*



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contemporary issues fastening the strict liability and vicarious liability on the employer for the tortuous acts of theirs against its women employees are highlighted.<sup>6</sup>

## **HISTORY**

In India, there was no statutory definition of Sexual Harassment till 1997 though there had been quite a few notable judgments earlier that pinned down and brought to fore the existence of this problem. Before 1997, any women facing Sexual Harassment at workplaces had to lodge a complaint under either section 354 or section 509 of the IPC. In both these sections, women's modesty and outraging the modesty were to be interpreted by the police officers on the duty at the time of reporting of incident.<sup>7</sup>

Moreover, till Vishaka's case, neither civil nor penal laws in India imposed any obligation on the employees or person-in-charge of the workplace to protect the female employees from Sexual Harassment. The entire scenario changed in the year 1997 with the introduction of SC guidelines, a part of the landmark judgement in the case of Vishaka and others v. State of Rajasthan and others owing to the gang rape of a woman, who was a social worker in a development programme, initiated by State Government of Rajasthan, aiming to curb the evil of child marriages. She was raped by a group of men as she attempted to stop a child marriage in their family.<sup>8</sup>

For the first time in the Indian judicial history, the Court recognized Sexual Harassment at work place a recurring phenomenon. The Hon'ble Supreme Court took initiative to define it in a formal legal manner in Vishaka v. State of Rajasthan. The Supreme Court judgement, which came on 13th August 1997, gave the Vishaka guidelines to prevent sexual harassment of working women and this is how this case marked the first step in the evolution of laws for the protection of women from harassment at the workplace. The court instructed that these guidelines should be implemented until new legislation is passed to deal with the issue. The affirmative action of the Apex Court was indeed laudable as it sought to fill the existing void due to absence of a suitable definition on the issue. The definition was closely in pari materia with that of CEDAW.

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<sup>6</sup> Workplace harassment women concerns by R Satyanarayana, 2008

<sup>7</sup> ibid

<sup>8</sup> <https://www.gktoday.in/gk/sexual-harassment-at-workplace-developments-post-vishaka-judgement/>

The aim of the Supreme Court during the cause of evolving these guidelines was to ensure a fair, secure and comfortable work environment on one hand and completely eliminate situations or possibilities where the protector could abuse his trust and turn predator on the other. The court also justified that these guidelines would not prejudice any rights available under the Protection of Human Rights Act 1993.

The judicial intervention of this sort was quite encouraging. The guidelines had a steady impact on the Government departments and institutions. Gradually, the system started adopting and implementing the said guidelines. The employers or person-in-charge of the work places, in public as well as private sectors, were directed to take appropriate steps to prevent Sexual Harassment.

Legislative and administrative changes - Post – Vishaka’s case the most important development after the Vishaka judgement was the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. This Act was enacted in April 2013 as India's first law dealing with the protection of women against sexual harassment at workplace. Some important features of this Act are as follows:<sup>9</sup>

- This Act aimed to provide every woman, irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment.
- This Act covered both the organized and unorganized sectors in India. The statute applied to all government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment industrial, financial activities, hospitals etc.
- This Act defined 'sexual harassment in line with the Supreme Court's definition in the Vishaka’s Judgment.
- The Act extended the meaning of the word sexual harassment to include "presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment, threat of detrimental treatment in employment, threat about present or future employment, interference with work or creating an intimidating or offensive or hostile work environment, or humiliating treatment likely to affect the lady employee’s health or safety could also amount to sexual harassment".
- The Act also introduced the concept of 'extended workplace' since sexual harassment is not always confined to the primary place of employment. Therefore, the Act

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<sup>9</sup> <https://www.gktoday.in/gk/sexual-harassment-at-workplace-developments-post-vishaka-judgement/>



defined 'workplace' to include any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.

- The Act provided for the establishment of Internal Complaints Committee (ICC) at each and every office or branches of the organization employing 10 or more employees, in order to provide a forum for filing complaints to facilitate fast redressal of the grievances pertaining to sexual harassment.
- It also provided for the establishment of local complaints committee (LCC) at the district level by the Government to investigate and redress complaints of sexual harassment of the unorganized sector or from those establishments where the ICC has not been constituted for the reason being, it having less than 10 employees.

Apart from the above act, several provisions of the Indian Penal Code, 1860 were modified via the Criminal Law Amendment Act, 2013 to bring several offenses under its purview including outraging modesty of woman, assault or use of criminal force with intent to disrobe, stalking and voyeurism thus making an exclusive proviso to deal with the issue of sexual harassment.<sup>10</sup>

The Sexual Harassment Act was a much-awaited piece of legislation because prior to this act, there was no law to govern this matter and thus it appeared to be a significant step towards ensuring women a safe and healthy work environment. However, the Act still suffers from some flaws. Firstly, it fails to cover those women working in the agricultural workers and armed forces, which are largely men, dominated sectors. Secondly, the act appears to be gender biased since it only protects women. Thirdly, the act has wide scope for false allegations. There are high chances of these laws getting misused at the hands of women for their personal benefits. Fourthly, the provision regarding the fixing of the monetary compensation according to the economic potential of the person makes it discriminatory since the person with high rank and status will be made to pay more than the person with low status, which from nowhere seems to serve any purpose other than being discriminatory in nature.

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<sup>10</sup> <https://www.gktoday.in/gk/sexual-harassment-at-workplace-developments-post-vishaka-judgement/>

It is not to be denied that the Act marks an important step in recognizing a concern that affects most women however a lot is still needed to be done since for a better safety and protection of women, something more than the regulation of sexual conduct is needed because making regulation to guide the conduct of other person or moral surveillance of women's lives only strengthen the sexual stereotypes and sexual orthodoxy. Therefore, a more stringent law is needed to address the issue of sexual harassment with the support of and not at the cost of women's fundamental rights.<sup>11</sup>

## **LEGAL FRAMEWORK IN INDIA**

Sexual Harassment at work place is not so far recognized as a legally distinct type of prohibited activity in umpteen numbers of countries across the world. Legal systems in such countries tend to bring such acts within the scope of 'existing proscribed behaviour' either under criminal or civil laws.

Until Vishaka's case, India has also been one such country where there are plethoras of legal provisions to identify, recognize and define this problem, may be, under various distinct categories and without identical terminologies. There is no gain saying that each incident of sexual Harassment at the place of work results in violation of the fundamental right to gender equality and the right to life and liberty - the two most precious fundamental rights, guaranteed by the Constitution of India.

In India, The Indian Penal Code, 1860; The Code of Civil Procedure, 1908; The Code of Criminal Procedure, 1973; The Indian Evidence Act, 1872 along with many other special Acts and welfare legislations deal with this issue in one way or the other and provide for specific protection of women from such aberration. Also, various international conventions on the subject, to which India has been a signatory and has ratified, become a source of law. In addition to these, various landmark judicial pronouncements (dealing with sexual Harassment at work place) filled up the vacuum spread on the legal horizon till the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 legislation.

### **The Constitution of India**

"All Constitutions are the heirs of the past as well as the testators of the future. Since all governmental organs, organizations and institutions owe their origin and existence to the

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<sup>11</sup> <https://www.gktoday.in/gk/sexual-harassment-at-workplace-developments-post-vishaka-judgement/>



constitution and derive their powers from its various provisions; jurists' term it as Ground norm of the country. Moreover, it is a conclusive assumption and a legal fiction, which cannot be tested or questioned in any court. The ultimate aim of the makers of our constitution was to have a welfare state and an egalitarian society projecting the aims and aspirations of the people of India who made the extreme sacrifice for attainment of the country's freedom.

Almost all the provisions contained in various international instruments on the issue have already been incorporated in the constitution of India in 1950 itself. The commitment to gender equity is well entrenched at this highest policy making level in certain important provisions which are as follows:

### ***Preamble***

According to the Preamble of the Constitution, ours is a Sovereign, Socialist, Secular, Democratic Republic and it shall secure to all citizens, including women, justice, social, economic and political; like of thought, expression, belief, faith and worship: equality of status and of opportunity two purposes have been set out in the Preamble by framers of the Constitution of India:

(1) To constitute India into a Sovereign Democratic Republic (2) To secure to citizens justice - Social, economic, and political; liberty of thought, expression, faith and worship: equality of status and opportunity, and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation.

Although the expressions, 'justice', 'equality', and 'fraternity' may not be susceptible to exact definition, yet they are not mere platitudes. These are given content by the enacting provisions of the constitution particularly by Part III, the fundamental rights and Part IV, the Directive Principles of State Policy."

Part III and Part IV, though constitute two entirely separate units of our Constitution, carry the common theme of human rights and rights included therein are equally fundamental. It is beyond any cavil of doubt that they are complementary to each other because together they constitute the human rights regime including respectively the civil and political rights and the social and economic rights. Thus, it can be made out that the tone for

the reformation of the society had already been set in our country through its Constitution. This Constitutional mandate is followed by the legislative intent being expressed in the form of various enactments from time to time.

***Article 14: Equality before Law***

This Article guarantees to every person the right to equality before the law or the equal protection of the laws. The guiding principle of the Article that all persons and things similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Hence, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. A classification to be valid must be reasonable and always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test of permissible classification two conditions must be fulfilled, namely

- (1) The classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the group
- (2) The differentia must have a rational relation to the object sought to be achieved by the statute in question.

Bhagwati, J., in Maneka Gandhi's case" quoting himself from Royappa case" very clearly observed the principle of reasonableness in Article 14 as: "Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which logically as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence".

Article 14 read along with Articles 15 and 16 embody facets of magnified grandeur of equality.

Article 15: Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth.

According to Article 15(1) the state shall not discriminate on grounds of religion, race, caste, sex or place of birth or any of them.

Article 15 (3) - Nothing in this article shall prevent the state from making any special provision for women and children.



The use of the word "only" in Article 15 (1) has enabled courts to segregate sex from gender and uphold blatantly discriminatory legislation in some circumstances when such discrimination may be attributed to other factors in addition to sex. The court justified a special retirement age of fifty for airhostesses, using the provision for test." The Constitution does not prohibit the employer from considering sex in making employment decisions where this done pursuant to a properly or legally chartered affirmative action plan. According to the court, the but for test was developed to me that no less favourable treatment is to be given to woman on gender criterion which would favour the opposite sex and women will n be deliberately selected for less favourable treatment because of the sex. Article 15(3) provides that nothing prevents the State from making any special provision for women and children and if such a law made it cannot be treated as discriminatory against others. Thus, it has correctly been interpreted as an exception to the principle of non-discrimination guaranteed by Article 15(1).

It is evident from such a provision that the framers of the constitution realized the fact that the women needed protection and certain additional provisions in that regard had to be made in their favour. Hence, this unambiguous positive discrimination extended to women is an important aspect of the equality guaranteed.

#### ***Article 16: Equality of Opportunity in Matters of Public Employment***

The main object of Article 16 is to create a constitutional right in equality of opportunity and employment in public offices." Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. This relationship has been further emphasized in N.M. Thomas<sup>12</sup> and the Mandal Commission case.<sup>13</sup>

In yet another case<sup>14</sup> the court noted the purpose of Article 15(3) to be the recognition of the fact that for centuries women have been socially and economically handicapped. As a result, women were unable to participate in the socio-economic activities of the nation on a footing of quality. Article 15(3) is meant to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between

<sup>12</sup> State of Kerala v N.M Thomas 1976 2 SCC 310

<sup>13</sup> Indira Sawhney v Union of India 1992 Supp (3) SCC 217

<sup>14</sup> Government of Andhra Pradesh v P.B Vijay Kumar 1995 4 SCC 520

men and women. The Court in this case also stated that while the object of the provision was to strengthen and improve the status of women, the important limb of this concept gender equality is creating job opportunities for Women." Therefore, making special provisions for women in respect of employment of posts under the state is an integral part of Article 15(3)

In the year 2003, the Supreme Court upheld the classification between male and female for certain posts, providing for the appointment of a lady principal as a proper exercise of constitutional obligation under Article 15(3). The Court also referred to the earlier decision where it was held that "as a result of the joint operation of Article 15(1) and Article 15(3), the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women",

Clause 2 of Article 16 prohibits discrimination on the ground of sex in the matters of public employment. The Court recognized the need to bridge the gap between the constitutional prohibition on sex discrimination in Article 16 and the actual law in practice."

Sex discrimination is prohibited under the Constitution, on a combined reading of the provisions of the equality code' with Articles 15 and 16 being interpreted as facets of Article 14. The Supreme Court has on several occasions held that "gender equality enshrined in Article 14 is one of the basic principles of the Constitution Feminist critiques of violence against women suggest that the issue of sexual Harassment at work place should be seen in the larger context of patriarchy and gender hierarchies which women are constantly subjected to. At the international level, Catherine Mackinnon, a leading feminist and legal scholar, recognized the link between and helped situate sexual Harassment of women at the work place within the larger problem of sex discrimination. At the national level, the Supreme Court of India in Vishaka's Case recognized this linkage.

#### ***Article 19: Protection of Certain Rights Regarding Freedom of Speech etc***

Gender discrimination in employment adversely affects a woman's freedom to carry out her occupation. The Supreme Court has struck down gender discrimination employment on several occasions. In C B Muthamma, LES v. Union of India, service rules that placed an unfair burden on women were labelled as discriminatory. In Mackinnon Mackenzie and Co. v. Audry D'Costa," the Court held that gender-based discrimination in employment arises when men and women are paid differently for the same work. However, it is important to note that neither of these cases framed sexual Harassment in work place in terms of a violation of the fundamental right to work.



For the first time, the Supreme Court in Vishaka's case held that, one of the logical consequences of incidents of sexual Harassment at work place is the violation of the woman's fundamental right under Article 19(1)(g) to business." The fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working environment. Sexual Harassment of women at their places of work exposes them to great risk and hazard and places them at an unfair position vis-à-vis other employee. This adversely affects their ability to realize their constitutionally guaranteed rights under Article 19(g).

In yet another case<sup>15</sup>, the Court referred to the International Covenant on Economic, Social and Cultural Rights and the right of a woman (listed in the Covenant) to fair conditions of work. Accordingly, women should not be subjected to sexual Harassment that places them in an inequitable position by vitiating the safety of their working environment. In a recent judgment, The Division Bench of Delhi High Court has held that if the boss or employer calls an employee at any other place outside the workplace in connection of the office work, whether at his house or a mess, that other place shall amount to workplace if any kind of harassment is meted out to that lady at such place."

### ***Article 21: Protection of Life and Personal Liberty***

The Supreme Court in its interpretation of the "right to life" under Article 21" has on many occasions stressed that the right to life could not be equated to living out an animal existence." The right to life would necessarily imply the right to live with human dignity and would include those aspects of life that make life meaningful complete and worth living. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and commingling with fellow human beings. Gender discrimination has been recognized as an obstacle to the full realization of the right to life under Article 21.

In yet another case<sup>16</sup>, the Court held that equality, dignity of person and the right to development are inherent rights of every human being. For the meaningful enjoyment of the right to life under Article 21, every woman is entitled to the elimination of obstacles and of

<sup>15</sup> Apparel Export Promotion Council v A.K Chopra 1999 1 SCC 759

<sup>16</sup> C Masilamani Mudaliar v Idol of Sri Swaminathaswam Thirukoli 1996 8 SCC 525

discrimination based on gender. The Court reiterated that State has an obligation to eliminate gender-based discrimination and to create conditions and facilities conducive for women to realize the right to economic development, including social and cultural rights.

The Supreme Court stated that women have the right to life and liberty under Article 21; similarly, they also have the right to be respected and treated as equal citizens. The Court held that offences of rape were acts of aggression aimed at degrading and humiliating women. Such offences were crimes against basic human rights and are also violative of the fundamental right to life under Article 21. The judges emphasized that "the... dignity of women cannot be touched or violated." Thereby, the right to life includes the right of women to live with dignity and to lead a peaceful life. The Supreme Court reiterated that physical violence at the hands of government employees who outraged the modesty of women violates the right to dignity of women.

In Vishaka's case the Apex Court held that each incident of sexual Harassment of women at the workplace is a violation of the right to life under Article 21, which implies the right to dignity. According to the Court, the principle of gender equality includes protection from sexual Harassment and the right to work with dignity, which had been reflected in international conventions and norms. The Court went on to hold that it is the primary responsibility for ensuring such safety and dignity of women through suitable legislation, and executive. However, in the absence of existing protective mechanisms, the Court evolved certain guidelines to deal with instances of sexual Harassment resulting in the violation of important fundamental rights of women workers under Article 14, 19 and 21.

The Supreme Court in A.K. Chopra case reiterated that the Indian State had an obligation under CEDAW and the Beijing Declaration to prevent sexual Harassment and held it to be beyond the scope of debate that sexual Harassment of a female at the place of work is incompatible with the dignity and honour of female." The Court emphasized that there could be no compromise on the urgent need to eliminate such practices. Sexual Harassment at work place is violation of the right to privacy under Article 21. The right to privacy is an integral part of the right to life and personal liberty guaranteed under Article 21. This right can be traced back to the case in which Subba Rao J. held in his separate judgment:

"Right to personal liberty in Article 21 can be defined as a right to be free from restrictions or encroachments on the person, whether those restrictions or encroachments are



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directly imposed or indirectly brought about by calculated measures, "The link between the rights to privacy and the right to personal liberty under Article 21 was further emphasized.

The Court also held that the right of privacy in Article 21 should be interpreted in conformity with India's international obligations in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. An act of sexual Harassment is a violation of the right to privacy of a woman, and therefore of the right to personal liberty and life under Article 21.

The right to privacy includes the right to be let alone. Even so, the Supreme Court has attempted to define the right to privacy to include personal intimacies of the home, family, marriage, procreation, motherhood and child rearing. Elaborating on the right, any questions to a female candidate regarding personal problems such as pregnancy, menstruation etc., which modesty and self-respect may preclude the disclosure of, should be deleted from enquiry by the employer.

In Indian criminal law, there is no chapter specifically dealing with violence against women and available provisions to tackle such issues of organic problems lie scattered under various chapters. Moreover, as far as sexual Harassment is concerned neither there is any offence identified, described or listed as such nor it has ever been enunciated as juridical category of crime. From these propositions, this can and should not be inferred that the Indian Penal Code, 1860 does not recognize sexual Harassment even informally, or that there are no existing laws as such that can be invoked in case such issue arises. There are number of related laws which have been there in the statute books for more than century, though framed to recognize and define particular offences: which by virtue of the definitions therein, also cover the incidents of sexual Harassment. It has been clearly mentioned in Vishaka's case that, excuse the definition given therein is not exhaustive one and that it does not preclude the possibility of other serious manifestations of Harassment being covered under offences that are already defined the penal code.

Following provisions of the Indian Penal Code may be evoked case, act, or incident of sexual Harassment at workplace:<sup>17</sup>

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<sup>17</sup> Sexual harassment at workplace by Ritu Gupta 2014

Sections 292-294 of the Indian Penal Code deal with the sale or exhibition of obscene books and objects, as all well as obscene acts a song in public places, which cause annoyance or inconvenience to the public. These activities are defined as offences under these sections the provisions of section 294 may also be applied for the cases of sexual Harassment.

The word 'obscene' has not been defined in Indian Penal Code. However, the dictionary defines 'obscene' as 'what is repulsive by reason of malignance, hypocrisy, cynicism, irresponsibility, gross disregard of moral or ethical principles.

Obscene - offensive to chastity or modesty, the expression of something which decency forbids to be expressed, A person who is annoyed by the obscene act, intended for someone else, can also file complaint under section 294 of Indian Penal Code. The word 'obscene' under this provision means offensive to chastity or modesty, the expression of something which decency forbids to be expressed.

The test of obscenity in ultimate analysis is: whether the language complained of would deprave and corrupt those whose minds are open to immoral influences. The form of expression and not the actual meaning is important. Distinction should be drawn between obscenity and frankness of expressions.

Annoyance - For an act to be punished under this section, it must cause annoyance either to a particular person or persons in general. Public Place Obscene act must have been done in a public place or near a public place.

In *Zafar Ahmed Khan v. State*<sup>18</sup>, words used by the harasser therein were held clearly offensive to the chastity and modesty of the girls and were likely to personate the minds of hearers including the girls. Both men and women can complain under this provision. Using bad language out of temper would be punishable.

Section 294 of Indian Penal Code encompasses the offence called in common parlance "eve teasing" (an English phrase) and refers to all forms of harassment women face in public places that are considered routine, funny or trivial. As per this provision those who commit any of these acts would be punishable.

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<sup>18</sup>AIR 1963 ALL 105



### ***Sections 339-348: Wrongful Restraint and Wrongful Confinement***

Sections 339 and 340 define the wrongful restraint and wrongful confinement while the punishments for these have been laid in sections 341 and 342. For wrongful restraint, the maximum punishment is simple imprisonment for a term, which may extend to one month, or a fine, which may extend to five hundred rupees. For wrongful confinement, the maximum punishment is imprisonment of either description that may extend to one year, or a fine, which may extend to one thousand rupees, or both.

### ***Section 354: Assault or Criminal Force to Woman with Intent to Outrage Her Modesty***

In order to constitute an offence under Section 354, there must be an assault or use of criminal force on any woman with the intention or knowledge that the woman's modesty will be outraged. Under this provision, an offence of lesser gravity than rape would be punishable." Culpable intention is an essential ingredient and crux of the matter. M. Melvill. J. observed:

"We believe that in this country indecent assault are often magnified into attempt at rape, and even more often into rape itself, and we think that conviction of an attempt at rape ought not to be arrived at unless the court be satisfied that the conduct of the accused indicated a determination to gratify his passion at all events, and in spite of all resistance."

In between a complete rape and attempt to commit rape, there is a grey area covered by Section 354 IPC, assault or criminal force to outrage modesty or indecent assault. The dividing line between attempt to rape and indecent assault is not only thin but also is practically invisible.

One cannot escape prosecution by saying that the allegations are not true. To test the veracity of the allegations and try the case on merits is the responsibility of the court. The safeguard for the accused is that he is presumed innocent until proved guilty. There is no ambiguity regarding the penal provisions that such conduct is forbidden. Such harm, which is expressly declared criminal by penal law, should not be characterized as "slight harm" attracting section.

While the term sexual Harassment entered usage two years later in 1997, the Bajaj's Case witnessed the radical application of the archaic "Outraging of modesty" provision

preparing ground for the provision of harassment. Since the Indian Penal code does not define the term "modesty" which is the crux of Sections 354 and 509, Justice Anand and Justice Mukherjee dealt at length on dictionary meanings of the term which centred on words like "Womanly Propriety", "Shame", "Chastity", "Decency", "Decorous in manner and conduct", "Freedom from coarseness in delicacy and indecency" etc. As per the Dictionary meaning, 'modesty' is the quality of being modest and in relation to woman means "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct. It may also be defined as "freedom from coarseness, indelicacy or indecency, a regard for propriety in dress, speech or conduct."

In interpreting the expression harm appearing in the section the Court said that it is wide enough to include physical injury as also injurious mental reaction. The Justices then went on to consider Major Singh's case where Mudholkar J. who spoke for the majority deliberated on whether the modesty of a female child of seven could be outraged and concluded that when any act done to or in the presence a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of these sections. One them further observed that the essence of a woman's modesty is he sex and since birth, she possesses that modesty which is the attribute of her sex.

Justice Anand and Justice Mukherjee, in mapping the meaning of 'modesty' and the implications of outraging that modesty, proceeded to reaffirm that "common notions of mankind" must be gauged by "contemporary societal standards". These gendered social notions see sex as the essence of modesty and modesty as the essence of the female sex and men, by virtue of their sex and gender have the prerogative and privilege of access to both sex and modesty and held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to "outraging of her modesty" for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady - sexual overtones or not, notwithstanding. Also, sagacity will be the first casualty and this is not a case of slight harm. The key factor is whether a person of ordinary sense and temper would complain of the harm or not. It is the duty of the police to investigate the matter and of the court to take cognizance of the matter, if a prime facie case is made out. One cannot escape prosecution by saying that the allegations are not true. To test the veracity of the allegations and to try the case on merits is the responsibility of the court. The safeguard for the accused is no ambiguity regarding the penal provisions that such conduct is forbidden. Such harm, which is





expressly declared criminal by penal law, should not be characterized as "slight harm" so as to attract section 95.

Thus, the provisions of this section 354 and a range of situations as listed in Vishaka's judgment criminalize any conduct aimed at insulting the modesty of a woman. Further, entering into a woman's work place or work station with an intention to commit an offence or intimidate, assault or annoy her will not only be covered up by the abovementioned sections but may also amount to criminal trespass.

Rape can be an extreme form of sexual Harassment faced by working women. It may happen on a business trip with colleagues while staying at hotel or any other place or while away at some seminar with the colleagues or superior where she may be called into his room by any of them on the pretext of some urgent official assignment. She may be compelled for sexual intercourse with a threat that if she resists, she will have to lose her job or will have to face adverse circumstances. She may be placed under duress and as a result, she is unable to protest and submits herself involuntarily, to sexual intercourse. Such situations would amount to rape under this section notwithstanding the fact that it simply started as workplace harassment.

As far as the issue of consent is concerned, the sole testimony of the prosecutrix can be relied upon by the courts. Moreover, even if there is no proof or evidence on record to show that she resisted, may not preclude, a conclusion that she was consenting to the Act. Even Vishaka's case, from where this problem got judicial recognition as violation of basic human rights, is an appropriate illustration of the same, where the victim was brutally raped because of the issues pertaining to her work. Moreover, sexual Harassment may appear to be a subtle form of violence as compared to rape, the implications often is no less horrible in extent and gravity. The modesty of the victim of workplace sexual Harassment, is outraged almost daily, may be many times a day, by humiliating conduct or the gestures of the perpetrator who may be her employer or colleague.

### ***Section 499: Defamation***

Character assassination is the easiest way to humiliate a woman colleague or employee as one who is out of the safe and secure four walls' of the society becomes prone to

such demeaning practices and it is resorted by those who fail in their repeated attempts to overpower her mind and body. Rumours are spread about her loose moral character and illicit relationships with the fellow employees, colleague or boss as pressure tactics. In this era of Information Technology, graffiti and obscene emails are sent to her and to others portraying her as a willing and consenting party.

The victim of sexual Harassment at work place is, generally, defamed by asking defamatory questions during the course of proceedings or pleadings or false counter cases. In such a situation, she can file a suit for defamation against the offender. The victim may file a case, under this section, against the perpetrator or authors of such stories, where she can ask for the remedies available under this section.

### ***Section 503: Criminal Intimidation***

A variety of incidents falling under the category of sexual Harassment may be covered under this section if the woman or her family is threatened for the fear of injury". Section 503 describes the kinds of threat that may trigger this section, such as a threat either to his person, reputation or property. This includes a person's physical and mental space, a threat to a person or to the property of another person in whom the threatened person has an interest. Thus, this section has very wide scope.

## **INTERNATIONAL CONVENTIONS AND INSTRUMENTS**

The discrimination against women in the form of Sexual Harassment has been rampant all through the ages and has always been a matter of concern for the nations around the world. Much of the impetus for its statute law and judicial decisions that prohibit or constrain sex discrimination and Sexual Harassment stems from the recognition of the equality of sexes in various international instruments and conventions. The international community has, so far, not only exhibited serious concern about the issue, it has also been dealt in several UN treaties, declarations and conventions apart from various regional instruments of the states, wherein most of these contain statements of a principle against discrimination on the basis of sex.<sup>19</sup>

### ***International Covenant on Economic, Social and Cultural Rights (1966)***

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) obligates State parties to ensure the equal right of men and Women to the enjoyment of all

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<sup>19</sup> Sexual harassment at workplace by Ritu Gupta 2014



economic, social, and cultural rights set forth in the Covenant. It recognizes the right to the enjoyment of just and favourable conditions of work, which includes the right of everyone to the opportunity to gain his or her living by work which he [or she] freely chooses or accepts, and requires States parties to take appropriate steps to safeguard this right.

The covenant also guarantees basic rights regarding employment conditions and remuneration. For example, its Article 7 acknowledges the right to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work, as well as equal opportunity for promotion and the right to "safe and healthy working conditions.

#### ***The International Covenant on Civil and Political Rights (1966)***

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the right to privacy and to personal integrity. Article 26, on the other hand, recognizes the equality of all people and United before the law and acknowledges the right to equal protection. Sexual Harassment invokes all of these rights since victims have their right to privacy and personal integrity violated, and the state has an obligation to protect all its citizens, both men and women, from having their right violated. Therefore, it follows that under the law, the state has an obligation to provide protection to victims of Sexual Harassment.

#### ***International Labour Organization Discrimination (Employment and Occupation) Convention***

Adopted in 1958, this convention defines discrimination as "any distinction, exclusion or preference made on the basis of sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" ' It requires State parties to implement a national policy to eliminate all forms of employment discrimination. Even though the convention does not specifically address the issue of Sexual Harassment, the fact that women are disproportionately affected by such behaviour brings it within the convention's definition of employment discrimination. Thus, states that are party to this treaty

are obligated to declare and implement a national policy to combat sex discrimination, including harassment, by employing measures that are appropriate to the local context.

In 1996, the International Labour Organization went on to adopt the General Surveys on Equality in Employment and Occupation Convention that interpreted the Discrimination Convention to include Sexual Harassment in its definition of prohibited forms of employment discrimination. This also defines Sexual Harassment, gives examples of prohibited conduct, and warns of the ramifications if left unattended.

### ***Role of United Nations***

The formation of United Nations Organizations in 1945, set the pace for the "attainment of human rights for all" emerged as priority area and the stage was set for realization of this goal with the adoption of the "Universal Declaration of Human Rights" in 1948. During the early 1950's, the struggle for women's rights gained importance as one of the major human rights concerns, which in turn, led to the adoption of vivid specific Conventions from time to time. Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution 1949, the Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value 1951, the Convention on the Political Rights of Women, 1952 followed by the Convention on the Minimum Age of Marriage and Consent to Marriage, 1962 were steps ahead in the positive direction. The spearheading of women's movement throughout the world towards the protection of women and their empowerment resulted in a landmark initiative when, in 1972, decided to commemorate 1975 as International Year of Women, The state parties were also urged to take each and every possible measure for the development of women in all spheres It was during this period that the landmark "Convention on the Elimination of All Forms Discrimination Against Women (CEDAW) was adopted by the UNO on December 19, 1979.

Further, the UN decade was culminated with the adoption of the "Forward Looking Strategies" documents at the UN Conference held in Nairobi in 1985 giving fitting accolade to the Decade. The "Nairobi Conference" was followed by the "Beijing Conference" (Fourth World Conference on Women), which adopted the Platform of Action Document. These landmarks initiatives by the UN during this period contributed substantially in prioritizing action by the State parties through legislative and other initiatives and proved to be milestones in the journey making the message loud and clear that Women's Rights Are Human Rights.



### ***Charter of United Nations***

The United Nations reaffirms its faith in securing fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life enlarge freedom. All UN member states have a responsibility to uphold constitutional guarantees of basic human rights that are compatible international law. The UN Charter, which expresses "faith in fundamental human rights and in the dignity and worth of the human pane and the equal rights of men and women", imposes a duty on member states to promote "universal respect for and observance of man rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion".

### ***Universal Declaration of Human Rights (UDHR) 1948***

In 1948, the UN General Assembly adopted and proclaimed the Universal Declaration of Human Rights (UDHR) by its resolution dated 10.12.1948. The Preamble, inter alia, sets out as under:

WHEREAS the recognition of the INHERENT DIGNITY and of the equal and inalienable rights of all members of the human family is the foundation for freedom, justice and peace in the world

WHEREAS the people of the United Nations have in the Charter affirmed their faith in fundamental human rights, IN THE DIGNITY AND WORTH OF THE HUMAN PERSON AND IN THE EQUAL RIGHTS OF MEN AND WOMEN

It further affirms that; all human beings are born free and equal in dignity and rights. Human Rights jurisprudence based on the UDHR has acquired recognition as the 'Moral Code of Conduct having been adopted by the General Assembly of the United Nations.

Article 2 establishes that all people are entitled to the Declaration's enumerated rights and freedoms without distinction, including the based-on sex. The Declaration's Article 23(1) carries significant weight in the context of Sexual Harassment, as it establishes "the right to work, to free choice of employment, to just and favourable conditions of work, and to

protection against unemployment." Although this Declaration is only a morally binding document, it is still important because it establishes clear international norms that human rights violations are unacceptable and must be remediable by law.

Comprising of 30 Articles, which spell out the basic civil, cultural, economic, political and social rights that all human being around the world should enjoy, the Declaration has served as an inspiration not only for the UN in adopting more than 80 Conventions and Declarations on wide range of issues but also stimulated the national governments in incorporation of these principles under their Constitution and other laws. The Indian Constitution, which came into force on January 26, 1950, contains 28 similar provisions out of 30 Articles of UDHR. This was followed by the two international Covenants i.e., Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights. The Universal Declaration, together with the International Covenants and their optional protocols, comprise the international Bill of Human Rights.

#### ***Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)***

One of the landmark initiatives by the UN, which has contributed substantially towards the protection and empowerment of women, is the adoption of CEDAW on December 18, 1979, which came into force on September 3, 1981. India signed the convention on 3 July 1980 and ratified it on June 25, 1993 with a declaration and reservations in respect of Article 5(a), 16(1), and 16(2) and 29(1). The convention declares that states must act to eliminate violations of women's rights whether by private persons, groups or organizations. More specific international standards in relation to Sexual Harassment at the workplace are embodied in the CEDAW Convention.

Article I of the CEDAW Convention defines discrimination as

*'Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'*

Further, under Article 2(e), State parties are obliged to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprises.

The CEDAW Convention imposes an obligation on states to eliminate all types of discrimination against women, and then applies this general principle to the employment

context as well. This way the treaty represents an unambiguous mandate for states to the affirmative steps that are necessary to ensure the substantive quality of women at the workplace, both in treatment and opportunity. To be sure, substantive equality of women in the employment content cannot be achieved without the elimination of Sexual Harassment this represent a barrier to their ability to seek employment, and healthy working environments, and achieve advancement within the workplace through promotions.

More specifically, Article 11 of the convention contains a principal substantive provision on Sexual Harassment in international law. It reads that:

1. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work is an inalienable right of all human beings:
- (b) The right to protection of health and to safety in working conditions...

In 1992, the CEDAW Committee went one step further by formulating and adopting General Recommendation which expressly recognizes Sexual Harassment as a form of violence against women.

This defines Sexual Harassment as "unwelcome sexually determined behaviour [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions."It further elaborates that such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment". General Recommendation spells out how State parties should bear responsibility for acts of gender-specific violence perpetrated by private actors.

Article 12

1. "State parties shall undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present convention."

The general recommendations of CEDAW in this context in respect of Article 11 are: Violence and equality in employment. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as Sexual Harassment in the work place.

Furthermore, Article 15 of the convention affirms the general principle that states "shall accord to women equality with men before the law." This means that not only does a state have an obligation to protect women against the violation of Sexual Harassment but also must provide adequate recourse in the event that this right is violated.

#### Article 24

"State parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present convention."

On 6 October 1999, in a landmark decision for women, the United Nations and General Assembly adopted the optional protocols containing 21 Articles to the CEDAW, which entered into force on 22 December, 2000. The state parties, which ratify the optional protocol, recognize the competence of the committee on elimination of discrimination against women to consider petitions from individual women or groups of women who have exhausted all national remedies. The optional protocol also entitles the committee to conduct inquiries into grave or systematic violations of the convention.

#### ***Conventions against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)***

The convention against torture and other cruel, inhuman and degrading treatment or punishment (the torture convention) was adopted by the General Assembly, on December 10, 1984. India signed the convention on 14 Oct. 1997. The convention defines torture in Article I as:

"Any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him (or her) or a third person information or a confession, punishing him (or her) for an act he or she) or a third person has committed or is suspected of having committed or intimidating or coercing him (or her) or a third person, or for any other reason based on discrimination of any kind, when



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such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."<sup>20</sup>

This convention is predominantly relevant to certain issues concerning women, including female genital mutilation and gang rape.

### ***International Conference on Population and Development (ICPD)***

The ICPD held at Cairo in 1994 emphasized on the need to empower women and improve their status for achieving sustainable development, according to the ICPD Programme of action universally recognized human rights standards are applicable to all aspects of population programmes.<sup>21</sup>

### ***Declaration on Elimination of Violence against Women***

"Any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

Violence against women shall be understood to encompass, but is not limited to, the following: Physical, sexual and psychological violence occurring in the general community including Sexual Harassment and intimidation at work. As such, it creates an obligation for states to exercise all due diligence in eliminating such forms of unacceptable behaviour.

Thus, these are the various international conventions and instruments which directly or indirectly has the provision to protect the women specifically prevention of sexual harassment.

## **COMPARATIVE ANALYSIS**

Sexual Harassment at workplace is been faced not just in India but by all the women over the world. It has nothing to do with been a developed nation or a developing one. The Status is just the same everywhere. And as every country has its own story, they have their own laws to deal with such situation. United States though a leader in many fields, has never

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<sup>20</sup> Sexual harassment at workplace by Ritu Gupta 2014

<sup>21</sup> Sexual harassment at workplace by Ritu Gupta 2014

been a leader in women's right. The legal Status and treatment of women raise difficult issues. The 1948 Universal Declaration of Human Rights included women when it guaranteed rights to everyone.<sup>22</sup>

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

### ***U.S.A***

In USA, Equal Employment Opportunity Commission (EEOC) is a federal agency that administers and enforces civil rights laws against workplace discrimination. An employee who faces sexual harassment can file a complaint at the Equal Employment Opportunity Commission, if dissatisfied with the organisational enquiry of the case. The agency works both for women and men. Sexual Harassment was first recognized in cases where the women lost their jobs because they rejected their employer's sexual overtures. This happened in case *Barnes v Costle*, 1977. Soon such behaviour was recognised in employment law, and could create an odious condition. Later, the two types of basic forms of harassment were *quid pro quo* and hostile environment harassment, were summarized in guidelines issued by the Equal Employment Commission.

The Women's Legal Defense Fund (WLDF) advocates public policies that focus on work and family concerns. Sexual Harassment is one of the critical issues the WLDF includes on its agenda. The WLDF provides technical assistance to activists and policy-makers, and participates in targeted litigation to challenge gender bias. The Fund also runs activities to educate the public about the human and social costs of gender discrimination. In 1991, the WLDF published information about Sexual Harassment in the workplace.

### ***U.K***

As far as Sexual Harassment at workplace is concerned, similar legislation is available against sexual discrimination all over the UK. The legal definition appears in two Acts-the Commonwealth Sex Discrimination Act (1985) and the Victorian Equal Opportunity Act (1984).

The Women Against Sexual Harassment organization (WASH) offers free and confidential support and advice to anyone who has been sexually harassed at work. WASH

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<sup>22</sup><https://www.indialegallive.com>



was launched in June 1985 and was the first such specialist advice agency. WASH's current work includes providing general, legal and employment advice as well as support to anyone who has been sexually harassed at work; advising trade unions and employers in both the public and private sectors on procedure and practice for dealing with Sexual Harassment, offering training to employers, staff, trade unions, women's groups and advice agencies on the nature of Sexual Harassment, how to deal with it, preventive measures and the law; delivering lectures in workplaces and educational establishments, to women's groups and at union meetings running conferences on the legal and employment issues relating to Sexual Harassment; acting as an information and resource Centre, and publicizing the serious nature of Sexual Harassment through the media.

A survey published by the EU Fundamental Rights Agency in 2014 found that sexual harassment was the most common form of violence against women across the EU, with 68 per cent of women respondents in the UK saying they had experienced sexual harassment since the age of 15 and 25 per cent having been sexually harassed in the past 12 months. 85% of women aged 18-24 years have experienced unwanted sexual attention in public places.<sup>23</sup>

The recent data of 2019 shows that 40% of managers who are men are uncomfortable participating in common workplace activities with women. This reflects the widespread reports of Sexual Harassment are increasing and men are also afraid of such things. We realise the common growing position in UK when polling was conducted of 1553 women and 52% of them experienced unwanted behaviour at work including groping, sexual advances and inappropriate jokes.<sup>24</sup>

According to a survey conducted by in 2019, 13 percent of women in the United Kingdom have been exposed to visual and verbal harassment at work such as to whistling, rude gestures or comments. In this year, another common type of sexual harassment at work in the United Kingdom was reported by women who were exposed to obscene proposals or messages with a sexual connotation at work.<sup>25</sup>

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<sup>23</sup><https://www.indialegallive.com/>

<sup>24</sup><https://www.indialegallive.com/>

<sup>25</sup> <https://www.indialegallive.com/>

The National Crime Records Bureau (NCRB) has started collecting data regarding sexual harassment at workplace under Section 509 of IPC — the category of ‘insult to the modesty of women at office premises’ — since 2014. The total number of cases registered under this category during 2014, 2015 and 2016 were 57, 119 and 142, respectively.

As far as complaints registered with the National Commission for Women (NCW) are concerned, there is an increase in cases registered under the category of ‘Sexual Harassment includes Sexual harassment at Workplace’. The number of such complaints registered during the last three years is 539 (2016), 570 (2017) and 965 (2018), according to a statement issued by the Ministry of Women and Child Development.

The Ministry of Women and Child Development has developed an online complaint management system, called Sexual Harassment Electronic-Box (SHE-Box). Complaints related to sexual harassment at workplace by women, including government and private employees, can be registered on the portal. A total of 423 complaints had been registered on SHE-Box till now and 114 of them have been disposed of, according to the ministry.<sup>26</sup>

## **SUGESSTIONS AND RECOMMENDATIONS**

Sexual harassment at the workplace is a social challenge that needs to be addressed.

- ✓ It is important to enhance the awareness of employers and employees on the existence of forms of sexual harassment at the workplace, preventive measures, and legal framework on preventing and addressing sexual harassment.
- ✓ Dissemination and awareness raising activities should be regularly conducted and evaluated in order to improve best practice on how to address sexual harassment in the workplace, and also to forearm and inform of forms of sexual harassment to enable potential victims to avoid them.
- ✓ Enhancing training courses on sexual harassment and providing documentation or a handbook on the prevention of sexual harassment at the workplace can help in combating it.
- ✓ The training can be organized in modular form, including knowledge, skills, education and communication on the prevention of sexual harassment at the workplace, as well as counselling and proper guidance.

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<sup>26</sup> <https://www.thestatesman.com/>

- ✓ Even though the Act is in force since 2013, the awareness regarding consequences of sexual harassment and its redressal against the same is limited.
- ✓ The effective implementation of POSH Act not only requires creating an environment where women can speak up about their grievances without fear and get justice but sensitization of men towards treatment of women at workplace is equally necessary.

## **CONCLUSION**

Sexual harassment at work place is not just a private problem between harasser and victim: it is an issue, which has implications for all employees and management at the work place. Sexual Harassment at workplace covers a wide diversity of behaviours ranging from flirting, verbal remarks to physical contact and sexual advances. Sexual harassment at workplace can take the form of a power display, intimidation or abuse from a superior or co-workers. The contemned segregation of women in low-paid, low status and precarious jobs contributes to this problem. Moreover, the perception in different contexts and cultures of what constitutes sexual harassment at work place is extremely diverse.

In general, the orientation of a culture or shared beliefs within a sub-culture helps define the limits of tolerable behaviour. To the extent a society does tolerate unwelcome sexual conduct of male members; the values of individuals within that society will develop accordingly. Attitudes of gender inequality are deeply embedded in many cultures and sexual harassment of women at work place can be viewed as a violent expression of the cultural norm. Discrimination against women and gender stereotypes carried in workplace tend to perpetuate sexual harassment of women at work place. The physical, social and economic consequences of sexual harassment at work place are long-term. In many cases sexual harassment brings shame not only to women but to their families and communities. This will bear strongly on women's entitlement to resources marriage and livelihood. Sexual harassment violates a woman's right to job security and equal opportunity. It can create working conditions that are hazardous to the physical and psychological well-being of women workers. It also creates a poisoned work atmosphere that can dis-empower and demoralize women workers. Thus, it needs to be prevented and protected from every place of work.

***Everybody Deserves to Feel Safe, Confident and Respected at Work.***