

**SEXUAL HARASSMENT: COOPERATIVE LEGAL
APPROACH**

Dr. Akanksha Dudi

Assistant professor of political science

SRRM Govt P.G College, Jhunjhunu

Abstract

A necessary prerequisite for the existence of decent labour is the elimination of all forms of prejudice and physical abuse in the workplace. The concepts of non-discrimination and equality are ingrained in the constitutions of the majority of nations as well as in human rights treaties. These ideas are acknowledged on an international level as being essential to any system of human rights protection. Non-discrimination as well as equal opportunities and treatment are regarded as fundamental human and labour rights in the context of the working world. These rights are essential for achieving social justice and fostering sustainable development. Sexual harassment is a significant kind of sex discrimination, and it should not be accepted because it undermines equality at work by calling into doubt the integrity, dignity, and well-being of employees. This behaviour should not be condoned because it undermines equality at work.

keywords: Sexual , harassment, social

INTRODUCTION

A necessary prerequisite for the existence of decent labour is the elimination of all forms of prejudice and physical abuse in the workplace. The concepts of non-discrimination and equality are ingrained in the constitutions of the majority of nations as well as in human rights treaties. These ideas are acknowledged on an international level as being essential to any system of human rights protection. Non-discrimination as well as equal opportunities and treatment are regarded as fundamental human and labour rights in the context of the working world. These rights are essential for achieving social justice and fostering sustainable development. The International Labor Organization (ILO) Declaration of Philadelphia in 1944 asserts that all human beings, regardless of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security, and equal opportunity. It also asserts that discrimination is a violation of the rights enumerated in the Universal Declaration of Human Rights. The Universal Declaration of Human Rights was adopted in 1948. ILO member states ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1958, almost 15 years after the Declaration of Philadelphia was approved by the International Labor Organization (ILO). This Convention has the goal of protecting all individuals from discrimination in the workplace, and it requires ratifying states to ensure protection against discrimination in employment and occupation on seven grounds: race, colour, sex, religion, political opinion, national extraction, and social origin. Additionally, ratifying states are required to ensure protection against discrimination in employment and occupation on other grounds that are prohibited in national legislation by governments after consulting with the representative employers' and workers' organisations. Convention No. 111 is a basic ILO Convention. It is the most comprehensive international instrument dedicated to guiding national law on the

promotion of non-discrimination and equality in the world of work¹, and it is one of the core ILO Conventions. The Convention has been ratified by 172 member States, including India, expressing their commitments to uphold the human rights of workers and gradually incorporating equality and non-discrimination principles in the world of work and other laws and regulations. The principles of nondiscrimination and equality in workplaces are widely accepted, and the Convention has been ratified by 172 member States.

In spite of the fact that there is a general agreement on a global scale and a commitment at the national level to eliminate discrimination and to promote equality of opportunity and treatment, various forms of discrimination continue to prevail in the world of work, making it impossible for women and men to have jobs that are considered to be of a sufficient quality. Sexual harassment is an example of a type of discrimination that should be addressed in accordance with the requirements of the Convention since it is based on the fact that the victim is a woman. Women and men might be on opposite ends of the harassment spectrum when it comes to sexual harassment. On the other hand, the vast majority of instances of sexual harassment in the workplace are committed by males against women. This is due to the fact that women frequently do not have the same status as men, lack influence, and are in situations that are more vulnerable and precarious. Although it is difficult to quantify the prevalence of sexual harassment in the workplace due to the varying definitions and perceptions of sexual harassment as well as the reluctance of the harassed to report their experiences, studies have revealed that sexual harassment at workplace is a reality for a large number of women. This is especially true for women who are in positions of power. According to the findings of a national telephone survey conducted in 2012 by the Australian Human Rights Commission, sexual harassment in workplaces across the country is quite common. The poll was conducted in Australia. One in four women (25%) and one in six males (16%) had been sexually harassed in the workplace in the past five years. It was shown that around one in five persons aged 15 and older have been subjected to sexual harassment in the workplace in the previous five years. It was observed that the majority of victims of sexual harassment were women under the age of 40, while the majority of harassers were found to be male coworkers. According to the results of the poll, women are at least five times more likely than males to have experienced harassment at the hands of a superior or employer. More over half of all cases of sexual harassment were committed by males against women, whereas the number of cases in which men harassed other men accounted for about a quarter². At their place of employment, between 40 and 50 percent of women in the nations that make up the European Union are victims of unwelcome sexual approaches, physical touch, or other types of sexual harassment³. Eighty-three percent of females aged 12 to 16 who attended public schools in the United States reported being the target of sexual harassment at some point in their education⁴. Studies conducted in Japan, Malaysia, the Philippines, and South Korea revealed that between 30 and 40 percent of women experience sexual harassment on the job⁵. These countries are all located in Asia. Oxfam India and the Social and Rural Research Institute in India collaborated on a research that was named Sexual Harassment at Workplaces in India 2011-2012. This study surveyed four hundred working women in the cities of Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmedabad, Lucknow, and Durgapur. 66 people out of the total of 400 respondents experienced a total of 121 instances of sexual harassment. 102 of the 121 events were reported to not include any physical contact, while 19 of the incidents did involve some form of physical contact. Ninety-three out of one hundred of the respondents said they were aware of the problem of sexual harassment of women in the workplace. Despite this, the vast majority of the victims did not pursue any kind of legal action against the people responsible for the crime.

Importance of addressing sexual harassment in the workplace

Sexual harassment is a significant kind of sex discrimination, and it should not be accepted because it undermines equality at work by calling into doubt the integrity, dignity, and well-being of employees. This behaviour should not be condoned because it undermines equality at work. Because people spend the majority of their waking hours in the workplace, workers of both sexes have the right to an environment that is protected, secure, free from discrimination and violence, and conducive to carrying out their roles and responsibilities. This is because the workplace is an arena in which they spend the majority of their waking hours. When people are subjected to sexual harassment, they are put through a variety of unpleasant experiences, some of which include suffering on a psychological and physical level as well as losses in their professional lives. Employees who are subjected to sexual harassment are far less likely to achieve high levels of productivity⁸. The harmful effects are not confined to causing harm to a single individual only. It has a domino and multiplier effect on the rest of the workers in the company, which has an influence on the workplace and brings about unfavourable outcomes such as compromised team work, economic loss, reduced productivity, and impeded development. Because it normalises sex discrimination and sexual violence, sexual harassment has a negative impact not only on the growth of the nation as a whole but also on the well-being of its people. This is because it impedes the achievement of equality between men and women, which in turn prevents the achievement of equality between men and women. As a result, confronting and working to eliminate sexual harassment is in the best interests of society as a whole.

Table 1: Cost of sexual harassment

Individuals	Employers/Enterprises	Society
<ul style="list-style-type: none"> • Psychological suffering including humiliation, reduced motivation, loss of self-esteem, and loss of trust • Behavioural change including isolation, emotional withdrawal from friends, family, and co-workers • Stress-related physical and mental illness including sleep disturbances, stomach ailments, and drugs and alcohol abuse • Professional losses, foregoing career opportunities, leaving employment. 	<ul style="list-style-type: none"> • Low productivity due to impaired judgment, compromised teamwork, demotivation, absenteeism, and high turn over • Hindered progress and innovation due to lack of trust and team spirit • Poor image of company: No applicants will fill vacancies at workplace where they fear sexual harassment. 	<ul style="list-style-type: none"> • Long term rehabilitation costs for the reintegration of the harassed • Unemployment welfare benefits and retraining • Legal and criminal justice expenses • Women’s undermined access to high-status and well-paid jobs which are traditionally male-dominated • Unsafe living and working environment condoning violence • Hindered productivity and development.

Because no employees have come forward to disclose instances of sexual harassment, many companies and organisations believe that there is no requirement to establish systems to deal with incidents of sexual harassment because no such occurrences have been recorded. Nevertheless, the fact that there have been no examples of sexual harassment recorded does not in any way imply that such conduct has not taken place. Since a young, innocent female medical student was brutally attacked and killed in New Delhi in December 2012, India has gained a reputation worldwide as a country that is hazardous for women. Every day, several instances of violence against women are brought to light by various news outlets. In India, the working environment is not an exception. It is reasonable to consider that incidents of sexual harassment and violence against women in society may also be taking place in their organisation if we say that organisations are the microcosms of society and reflect what actually occurs in a society. This is because organisations reflect what actually takes place in societies.

People who have been victims of sexual harassment are often at a loss as to whom they should speak to because there is no system in place to remedy instances of sexual harassment and there is no method to do so. The absence of a mechanism indicates that the organisation does not acknowledge or give importance to these concerns, which leads to an implicitly acceptable level of discrimination and violence. Moreover, the lack of a system indicates that the organisation does not pay priority to these issues. In the lack of formal institutions, it has recently come to light that women frequently refrain from speaking out about experiences of sexual harassment for a variety of reasons, some of which include fear of retaliation:

- Embarrassment and humiliation brought on by the event in question
- Fear that the matter will be trivialized and disregarded
- An uneasy feeling that they will not be believed since, in many cases, there is no physical evidence to back up their claims.
- Apprehension that the organisation will not take any action, and that the person who committed the crime will be permitted to go free. Even if the harasser is found guilty, there is always the possibility that the victim may be asked to resign or forced to accept a transfer.
- Dread of becoming a subject of gossip and further humiliation
- Apprehension of unfavourable consequences and reprisal from the person who harassed them, or possibly from their primary employer
- The worry that they will be criticised for "inviting" attention to the problem or even for bringing it up in the first place
- A sense of complying with social norms where women are taught to keep silent and to overlook 'bad behavior' by men .

In a nutshell, women are afraid of being victims twice over if they speak out against sexual harassment. First, they fear being victimised for making a complaint, and then they dread being victimised for having filed a complaint. Employers should acknowledge that sexual harassment in the workplace violates their employees' right to live and work with dignity, and they should take measures to ensure that a mechanism is in place that provides employees with clear directions regarding whom to approach in the event of sexual harassment, the procedures that will be implemented, and the amount of time that will be allotted for an investigation.

UNDERSTANDING SEXUAL HARASSMENT

One of the expressions of male domination and the position of women as being considered as objects of pleasure is sexual harassment. Sexual harassment is a form of sexual assault. This is experienced to a greater

degree in communities that have a patriarchal social structure. The patriarchal nature of Indian society may be found in its very foundation. In addition to being patriarchal, Indian society is also plagued by the existence of institutionalised forms of inequality, such as the four-caste system. Despite the fact that it is a widely frequent word, the precise meaning of what constitutes sexual harassment is still not entirely apparent. "Sexual Harassment in the Workplace Is an Unacceptable Practice" "Sexual Harassment in the Workplace" is defined as "unwanted sexually oriented behaviour that results from uneven power relations in the workplace and it has major implications for the employment of women." The term "sexual harassment" can refer to a wide variety of offences, ranging from the mildest kind of eve teasing to the most heinous crimes, such as rape. The term "teasing" can refer to either verbal or physical actions, as well as gestures, that are performed by men toward women in public settings. In India, eve teasing, which is considered to be a colonial legacy, is still continuing and perhaps constitutes the most common form of sexual harassment, to which all women, regardless of their ages, may be subject to be subjected. This form of sexual harassment may affect any woman who is eight years old or older. Surprisingly, some forms of eve teasing are rarely deemed to constitute instances of sexual harassment. According to Pratiksha Baxi, "Eve teasing in post-colonial India as a cognitive category that refers largely to sexual harassment of women in public spaces, thereby constituting women as eves, temptress who provoke 10 men into sates of sexual titillation," is the definition of eve teasing in post-colonial India. This demonstrates the level of acceptance that the culture has for such offensive behaviours. 11 In the case of Deputy Inspector General of Police v. S. Samuthiram, the court ruled that eve teasing is a breach of basic rights since it violates Articles 14, 15, and 21 of the Constitution of India. In addition, the offence of rape, which is the most severe form of sexual harassment, is typically considered to refer to sexual activity that was not consented to by the victim. In the context of India, the offence of rape is defined by section 375 of the Indian Penal Code, which was revised by the Criminal Law Amendment Act of 2013. A violation of this provision is considered to have occurred when a woman was subjected to an act that involved the penetration of her vagina, mouth, urethra, and anus by the penis or any other object against her will and with her agreement. The act of manipulating the body of a female for the goal of sexual penetration can also be considered a kind of rape. Between the two extremes of eve teasing and rape, there is a wide range of behaviour that may be classified as an act that outrages the modesty of 15 women via the use of force. These behaviours can be grouped together under the umbrella phrase of outraging the modesty of 15 women.

SEXUAL HARASSMENT VERSUS THE INDIAN LEGAL FRAMEWORK

The preamble of India's constitution makes it clear that the nation is committed to providing its people with social, economic, and political justice. In addition to this, it tries to ensure that all individuals, regardless of class or opportunity, are treated with respect. The rising incidence of assaults and other forms of violence against women goes against the ethos of this movement. According to the findings of the statistics compiled by the National Crimes Records Bureau, "The number of rape cases showed a significant increase of 112.7% over the year 2003 level, an increase of 47.6% over the quinquennial average of 2008 - 2012, and an increase of 35.2% over the previous year (24,923 cases)." This number is concerning enough to warrant one's attention and to highlight the significance of providing legal protection to those who have been victimised by these types of crimes. This is also true with regard to the other types of violence, including sexual harassment. According to a poll that was carried out in 2012, nine in ten women have been subjected to one or more types of sexual harassment, and the vast majority of these occurrences have either been unreported or have gone unaddressed. There has been a rise in the amount of interaction between men and women individuals in all 18 aspects of life, including the workplace, as a result of the expansion and development of the country. The

flip side of this is that Indian society is increasingly becoming a breeding ground for new forms of violence against women, which has been going on for a long time. Legal paradigm in connection to sexual harassment would be better understood by a discussion in several phases highlighting the legal and judicial reaction to the aforementioned issue, viz. pre and after Vishaka. The debate would be broken up into distinct sections to make it easier to follow.

i) Pre Vishaka Secenario

It is impossible to have a meaningful conversation about the sexual harassment statute in India without first addressing its complicated history. Despite the fact that there were several cases of sexual harassment that occurred before Vishaka, these cases were only able to bring about a little amount of reform, if any at all. Between the years 1980 and the early 1990s, there was an increase in the rate of sexual violence suffered by women; yet, despite the requests of a variety of groups, no meaningful improvements were brought about (primarily women). According to the claims that were made by Naina Kapur, the judicial system's response to incidences of violence committed against women was pitiful. The Supreme Court, in two separate instances involving the rape of two girls by police officers, had, in a very humiliating and a disparaging manner, laid the blame on the victim instead of reassuring the victims of violence. This was done in place of consoling the victims of violence. In the 1980s, sexual violence against women was only acknowledged in a select few forms, the most serious of which was rape, which was seen as the most abhorrent. In addition, there were offences involving obscenity and offences that outraged the modesty of women, which were classified under sections 294, 354, and 509 of the 23rd Indian Penal Code. Prior to the delivery of the Vishaka Judgement by the Supreme Court, acts of sexual aggression against women, biases, and opinions that conformed to conventional moulds were more commonplace than they were the exception.

Constitution of India

According to what is stated unequivocally in the Preamble of the Constitution of India, the primary purpose of the Constitution of India is to ensure that all people of India have access to justice, liberty, equality, fraternity, and dignity.

Fundamental rights vested by the Constitution

Article 14: Ensures that everyone is treated equally before the law and receives equal protection from it. It involves gender equality, which is a fundamental human right that is recognised all throughout the world.

Article 15: Prohibits discrimination on grounds of religion, race, caste, sex or place of birth

Article 19 (1) (g): Every citizen must be guaranteed the right to engage in any lawful profession, career, trade, or commercial endeavour of their choosing.

Article 21: Enshrines the right to life and personal liberty.

Relevant Constitutional provisions

- Article 51: The state is obligated to make every effort to encourage adherence to international law and fulfil its commitments under treaties.
- Article 253: The authority to put into practise international agreements and decisions reached at international conferences lies within the purview of the Parliament.

Indian Penal Code (IPC)

Sections 292: “Anyone who is caught selling, hiring out, distributing, or publicly exhibiting obscene material in pamphlets, papers, writings, drawings, paintings, representations, figures, or any other object, shall be punished on first conviction with imprisonment for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five years, and also with flogging. Obscene material”

Section 293: “whoever sells, hires, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in section 292, shall be punished on first conviction with imprisonment for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to seven years, and also with fine which may extend to five thousand rupees”

Section 294: “whoever, to the annoyance of others, (a) commits any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment for a term which may extend to three months, with fine, or with both. whoever, to the annoyance of others, (a) commits any obscene act in any public place, or”

Section 354: “whoever assaults or uses criminal force against any woman, intending to outrage or knowing it is likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term that may extend to two years, or with a fine, or both. The term may extend up to two years.”

Section 354 A: After receiving presidential assent in 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act was passed into law, which resulted in the addition of this provision to the Indian Penal Code. Through this newly added clause, the Sexual Harassment and Assault Prevention and Protection Act, 2013 (Amended Criminal Law Act, 2013) acknowledges sexual harassment, offers a precise definition of sexual harassment, and outlines the punishment for sexual harassment.

Section 354 C (voyeurism): “Any man who observes a woman engaging in a private act¹³ in circumstances where she would normally have the expectation of not being observed either by the perpetrator or by any other person at the perpetrator's behest, or who distributes such an image, is guilty of sexual assault. This includes men who watch the woman, take a picture of her engaging in the act, or both. On the first conviction, the sentence ranges from one to three years in jail in addition to a fine; on successive convictions, the sentence ranges from three to seven years in prison in addition to the fine.”

Section 354 D (stalking): “Any man is guilty of the crime of stalking if he either i) follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or ii) monitors the use by a woman of the internet, email or any other form of electronic communication, or iii) watches or spies on a woman in any manner that results in a fear of violence or serious alarm or distress in the mind of such woman or The sentence can range from one to five years in jail, depending on the type of incarceration, and a fine.”

Section 375 (rape): A man is found to have committed rape as defined if it is:

- without her consent
- against her will
- when her consent is taken by fear of death or hurt

- when her consent is taken by pretending to be her husband when he is not
- when her consent is taken when she is under the influence of drugs or drinks
- when she is mad or weak of mind and is not able to understand what the man is going to do
- with or without consent when her age is below 18 years
- when she is unable to communicate consent.

Section 509: Any man can be found guilty of the crime of stalking if he either i) follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or ii) monitors the use by a woman of the internet, email or any other form of electronic communication, or iii) watches or spies on a woman in any manner that results in a fear of violence or serious alarm or distress in the mind of such woman, or The penalty consists of a fine and between one and five years in jail, the length of which is determined by the kind of detention.

- intention to outrage the modesty of the women

knowledge that the act of the offender would result in outraging her modesty

action of the offender is such that it may be perceived as one which is capable of shocking the sense of decency of a woman.

Indecent Representation of Women (Prohibition) Act, 1986

According to this Act, a person is subject to a minimum term of two years in prison if they harass another person by sending them "indecent portrayal of women" materials such as books, pictures, paintings, films, brochures, parcels, and the like that include such images. Companies that have "indecent representation of women" (such as the display of pornography) on their premises are considered to be guilty of offences under this act and face a minimum sentence of two years in prison if found guilty under Section 7 (Offences by Companies), which states that such companies face a sentence.

Protection of Children from Sexual Offences Act, 2012

A "kid" is defined by this Act as any individual who has not yet reached the age of 18 years. All minors less than 18 years old are shielded from the criminal offences of sexual assault, sexual harassment, and pornography, each of which has been specifically specified in this legislation. This law also gives protection from pornography. The act prohibits sexual harassment, which is addressed under Section 11 of the Act. According to this section, a person is considered to have committed sexual harassment at the workplace upon a child when that person with sexual intent either i) utters any word; makes any sound; makes any gestures; or exhibits any object or part of body with the intention that such word, sound, gesture or part of body will be seen or heard by the child; ii) makes a child exhibit his body or any part of his body; or iii) shows an object or any type of print, visual. Whoever engages in sexual harassment of a child shall be subject to a sentence of imprisonment for a time that may not be less than one year and may not be less than a fine of not less than one thousand dollars. The Act imposes a responsibility on both the Central Government and the State Governments to ensure that the general public, children, and the children's parents and guardians are aware of the provisions of this Act through the dissemination of information through the media, which includes television, radio, and print media at regular intervals.

Information Technology Act, 2000

The following Sections of the Act can be applied depending upon the facts and circumstances of the case along with other relevant provisions:

Section 67: The dissemination of sexually explicit material through any kind of electronic media. According to the provisions of this section, anyone who publishes, transmits, or causes to be published in electronic form any material that is lascivious or appeals to the prurient interest; if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see, or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term that may extend to five years; in addition, the

Section 72: A sanction for violating someone's right to privacy and secrecy. Any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned may not disclose such electronic record, book, register, correspondence, information, document or other material, except as otherwise provided in this Act or any other law for the time being in force. This section states that any person who discloses such electronic record, book, register, correspondence, information, document or

CONCLUSION

Not only did the inattentive attitude of society and the judiciary towards women in India delay the implementation of anti-sexual harassment laws, but it also contributed to the continuation of violent acts against women and the victimisation of 87 of them. In the case of *Vishaka v. State of Rajasthan*, the Indian Supreme Court ruled that the constitutional values of equality, dignity, and non-discrimination were violated when women were subjected to sexual harassment in the workplace. In this regard, the Supreme Court likewise highlighted the necessity for legislation, but in the interim, it defined certain recommendations that would have the same legal effect as if the legislation had already been enacted. There was a sufficient amount of campaigning for such a legislation to be enacted by the feminist groups; nevertheless, the responsible authorities did not give this topic the attention it required and did not pass such a law. As was noted previously, the horrible acts of abuse of the law intern by the Judge not only led to the establishment of the Sexual Harassment Act, but they also led to an alteration in the Indian Penal Code. Both of these changes were brought about as a result of the events that transpired. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is a cure-all for the sexual harassment that women have been subjected to for generations. The legislation has specified workplace and other key features in a comprehensive and broad manner, both of which look to be promising enough to keep up with the aim of its enactment as it was originally intended to do.

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