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Women's Harassment at Workplace (Reform And Loophole)

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ABSTRACT:

With improved access to education and employment, millions of Indian women are entering the country's workforce today. Many working women face sexual harassment in the workplace on daily basis. It is crucial therefore that as a country, we strive to eliminate workplace sexual harassment since women have the right to work in a safe and secure environment. The protection of women is necessary for gender equality and the development of the nation as a whole.¹

-Maneka Gandhi²

This research paper aims to explore the issue of sexual harassment of women in the workplace, focusing on the current reforms and loopholes in existing policies. Sexual harassment is a prevalent problem that affects many women in the workplace, leading to negative consequences such as reduced job satisfaction, decreased productivity, and even mental health problems. The paper reviews various studies and reports on the topic, analyzing the prevalence, forms, and impact of sexual harassment on women's work lives. It also examines the legal framework surrounding sexual harassment, including the recent changes in laws and policies, and identifies the limitations and loopholes in their implementation. The study concludes that while some progress has been made in addressing the issue of sexual harassment in the workplace, significant gaps remain in the implementation of policies, and more needs to be done to protect women from this form of discrimination. The paper highlights the need for a more comprehensive approach to combating sexual harassment, including the establishment of a stronger legal framework, better awareness programs, and effective support systems for victims.

INTRODUCTION:

“I rise up my voice—not so that I can shout, but so that those without a voice can be

¹ Nikhil Mishra & Anisha Roy\ SEXUAL HARASSMENT: A LEGAL APPROACH TO ITS PROHIBITION AND REDRESSAL\ Vol1, Issue 4\ JUSCHOLARS\ Pag. 169,169,\ <https://lawbhoomi.com/wp-content/uploads/2020/12/Nikhil-Mishra.pdf>

² Wikipedia\ https://en.wikipedia.org/wiki/Maneka_Gandhi\ Last Visited 01\04\2023

heard. We cannot all succeed when half of us are held back.

-Malala Yousafzai

When one thinks of “crime”, the natural tendency is to hyperlink it to bodily damage or abuse stricken on every other with malicious motives, every now and then leading to fatalities. Simply people are adopting violence as a means to an end.

In recent years, the issue of Women's Harassment in the Workplace has received increased attention globally. Workplace harassment can be defined as any form of unwanted or offensive behavior towards a person because of their gender, race, age, religion, or any other protected characteristic. Women have been particularly vulnerable to harassment in the workplace, and this has had a significant impact on their career growth and job satisfaction. In this paper, we will examine the issue of women's harassment in the workplace, including the reforms and loopholes in the current legislation. The violence against ladies in India over the past long time has been all too well reported in home and international newspapers. Despite the fact that the data communicate for themselves, it's despite the fact that vital to understand that the difficulty is greater internationally than nearby.

Violence against a lady is to strike or hit or kick or punch or shove, or push or slap or to throw an object at a woman, whether or not that lady is a stranger or a relative, or your wife. To force or demand sexual interest from a woman when she is not willing is also violence against a lady. In a few international locations, a man may also legally call for intercourse from his spouse, and in others, home violence in India exists for both guys n women alike in India. But we normally listen to the worst stories about the home violence that guys do to girls and now not the vice versa tale.

WHAT IS SEXUAL HARASSMENT? :

In the Sexual Harassment at Workplace Act 2013 as a result of the growing importance of this issue, In Indian Penal Code, 1860 Section 354A was added to through the Criminal Law (Amendment) Act 2013 which sets out the offenses which an offenses of sexual harassment.³

They are:

- Sexually explicit remarks,
- Requesting or soliciting sexual favors; or

³ Nikhil Mishra & Anisha Roy, *supra* note 1, at 2.

- Advances involving unwelcome and explicit sex preludes and Physical contact; or⁴
- Displaying pornography against the woman's will; or⁵

Previously, there were no related laws in the Indian Penal Code, of 1860 that could be invoked. There were few sections in the Indian Penal Code, 1860 viz. Section 94, 354, and 509 to solve such offenses.⁶ These related laws are framed as an offense equivalent to public obscenity or acts deemed to violate the modesty of women. While Section 294 of the implementing regulation is a law applicable to both men and women, the last two are specifically aimed at women.⁷

Simply, Sexual harassment in the workplace is an act or pattern of behavior that threatens the physical, emotional, or financial safety and security of the employee. From a legal point of view, sexual harassment includes such things as unwelcome⁸ sexually conditioned behavior such as physical contact, soliciting sexual favors; any other unwelcome physical verbal or non-verbal sexual behavior Nature. Sexual harassment is also considered to have occurred if the victim has reasonable concerns and faces humiliation and health and safety problems in their place of employment. If the employer or co-workers do any act, word, or gesture that creates a hostile environment for a female employee, it amounts to sexual harassment.

Background: Before the milestone between Vishakha vs. Rajasthan State, there was no immediate provision of lewd behavior care. They were either excessively wide or too ambiguous. Indirect constitutional and legal protection was provided to working women; however, there was no immediate enactment on the matter to help them. It is on this basis that the judgment for that instance of the Supreme Court of India accepted extraordinary enormity.

Vishaka and others vs. State of Rajasthan AIR 1997 SC 3011⁹ :

Facts: Vishaka's sentence was the result of a severe assault by a social worker in a pack Bhanwari Devi in Rajasthan on the grounds that she tried to stop child marriage. Like a piece

⁴ Damini Singh Chauhan\ Sexual Harassment At Workplace Is An Affront to Women's Fundamental Rights: SC\ Legal Service India (March 27, 2023, 9:20 PM) <https://www.legalserviceindia.com/legal/article-1858-sexual-harassment-at-workplace-is-an-affront-to-women-s-fundamental-rights-sc.html>

⁵ *Id.* at 4.

⁶ *Id.* at 4.

⁷ *Id.* at 4.

⁸ Vishaka and others vs. State of Rajasthan AIR 1997 SC 3011

⁹ Vishaka and others vs. State of Rajasthan AIR 1997 SC 3011

of her work, Bhanwari Devi tried to stop the marriage of the little girl Ramkaran Gujjar. Despite the fact that the marriage took place, Bhanwari Devi was not excused. In 1992 she was wild the pack was attacked by a gathering of Thakurs in front of her better half who was also beaten up. The court passed judgment on her, but she did not lose her confidence. This inspired her co-workers who filed a PIL form in the Supreme Court of India requesting that the court consider respect for the inappropriate behavior of women in the workplace. Along these lines, the result was the judgment of the Vishaka case.

The judgment and its results: The Vishakha judgment is the first sexual harassment judgment in India and is therefore considered a landmark judgment by the Indian judicial system. An appeal under Article 32 was made for the best possible claim of a fundamental right working ladies under

- Article 15¹⁰ – Right to equality
- Article 21¹¹ – Right to life: to live with balance¹²
- Article 19(1)(g)¹³ – The right to practice any profession, i.e. privilege to the protected domain without provocation.¹⁴

It has since been considered a constitutional offense. In this judgment, it was held that notwithstanding working women have the rights to gender uniformity, to noble work, and to the workplace, protected and protected from lewd behavior or abuse. Before 1997, the ladies needed to stop the protest against Section 354 of the Indian Penal Code, which deals with "criminal assault on women with intent to outrage female modesty, and Section 509, which punishes individuals/people for using "a word, gesture or act expected to offend the humility of a lady'. These areas left the interpretation clause about outrage part of a woman's modesty discretion of the police officer. In 1997, when the Supreme Court issued a historic judgment on In the Vishakha case, it laid down rules to be followed by foundations in dealing with complaints of impropriety behavior. The court stated that these rules were to be implemented until legislation was enacted to govern the problem.

¹⁰ INDIA CONST, art. 15.

¹¹ INDIA CONST, art. 21.

¹² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013\
https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_%28Prevention,_Prohibition_and_Redressal%29_Act,_2013 Last Visited 01\04\2023

¹³ INDIA CONST, art. 19, cl. 1,g.

¹⁴ *Id.* at 4.

Vishakha Case Guidelines:

The rules which should have been implemented according to the Vishakha judgment are as follows:-

- Obligations of the employer or other observant people at workplaces and in various organizations:

It may be the duty of the business or other capable people in the workplace or other businesses to counter or discourage demonstrations of inappropriate behavior and provide a methodology for the detection, settlement, or prosecution of demonstrations of obscenity behavior by taking all the required steps. All businesses or persons involved in the work are liable to decide whether outside or privately decide how to find a way to stop inappropriate behavior Action: The employer is responsible for initiating discipline in its business whenever it exists misconduct or inappropriate behavior by forcing employees to comply with general and specific administrative rules.

- Committee for complaints in all working environments, headed by Mrs. Deputy, with at least Fifty percent (50%) of its individual are female.
- Grievance Mechanism: Whether such an act constitutes an offense under the Act or a violation of the Act the administration manages, a proper system of objections should be created in the trade association to review the protest of the injured party.
- Work initiative: Employees should be able to report inappropriate behavior at the workers' meeting and other suitable gatherings and it should be looked into positively Meeting employer and employee.
- Harassment by a third party: If there is inappropriate behavior, demonstrations, or exclusion by any outsider, the business and the individual in control will assume essential and reasonable steps to assist the affected individual in terms of supportive and preventive action concerned.

JUSTICE VERMA COMMITTEE REPORT,¹⁵

A three-member commission tasked with reviewing sex crime laws submitted its report

¹⁵ Association for Democratic Reforms\
adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf\ Last Visited
01\04\2023

government on Wednesday. A commission headed by former Chief Justice of India Justice JS Verma, yes identified "governance failure" as the main cause of sex crime. She criticized the government the police and even the public for their apathy and recommended dramatic changes. This committee was established after a violent gang attack on a paramedic student in Delhi. The basic point of this board was to prescribe revisions to the criminal law to speed up trials and improve the discipline of perpetrators accused of raping women. He prescribed changes in many areas including assault, rape, child trafficking, child sexual abuse, and more; however, the survey focuses only on the sexual badger in the workplace. The proposals for this zone can be summarized as follows "The committee suggested that domestic workers should be protected under the domain of sexual Harassment in the Workplace (Prevention, Prohibition, and Remedy) Act 2012, which was due before Parliament. Additionally, it suggested that the amendment in the draft law, which expresses that the jobs should be safe and secure from provocation. Another point of consideration was the effort to compromise created between the victim and the harasser should be rejected because it was not similar rules laid down by Hon'ble Supreme Court in the Vishakha case by SC. Key proposal from the party It was the Committee's view that an Employment Tribunal must be established rather than an Internal Grievances Committee up. The committee prescribed it on the grounds that it was because it had an internal committee of members that will not force the victim to make the right decision because the members of the inner council will be at some of the second points is governed by the employer himself. The Sexual Harassment Act 2013 did not join the few suggestions made by the Justice Verma Committee Eg under the Act is part of the remedy still an internal complaints committee to be established by the company. The 2013 Act then again, inserted section 354A making sexual harassment an offense, in each case, the extent of sexual harassment under the 2013 Act differs from its degree in Sexual Harassment of Women in the Workplace Act, 2013."

EXTENT OF WOMEN HARASSMENT IN THE WORKPLACE:

Research studies have shown that a significant proportion of women experience some form of harassment in the workplace at some point in their careers.

A study conducted by the International Labour Organization (ILO) found that 52% of women in the European Union had experienced sexual harassment at work. In the United States, a survey conducted by the Pew Research Center found that 42% of women reported experiencing some form of gender discrimination at work. These statistics indicate that women's harassment

is a prevalent issue that requires immediate attention.

The first case before the Supreme Court case after Vishaka in this respect was the case of Apparel Export Promotion Council v. A.K Chopra¹⁶ 132 In this case, the Supreme Court upheld the law established in Vishaka and upheld the dismissal. The senior officer of the Garment Export Promotion Board based in Delhi was found guilty of sexually harassing a female subordinate at work, in this judgment, the Supreme Court expanded the definition of sexual harassment by holding that physical contact is not necessary to amount to an act of sexual harassment.¹⁷ Further, the Supreme Court in its judgment in the case of Medha Kotwal Lele & Ors. V. Union of India & Ors¹³³¹⁸ noted and committed to monitoring the implementation of Vishaka guidelines across the country by directing state governments to submit affidavits outlining the steps they have taken to implement Vishaka's directives.¹⁹ Not satisfied, urged countries to put in place appropriate mechanisms to ensure effective implementation of the Vishaka guidelines. Finally, the Supreme Court said that in case of non-compliance or non-compliance aggrieved persons could refer to the instructions of respective High Courts. The Supreme Court also ordered that the complaints committee as contemplated in the judgment in Vishaka will be considered an investigative body for the purposes of the Central Civil Code, 1964 the report of the Grievance Committee shall be treated as an inquiry report according to those rules. Pursuant to this Order, the Central Govt. (Department of Personnel and Training) amended the Central Civil Services (Classification, Control, and Appeal) Order, 1965, R. 14, sub-r. (2) Incorporate the necessary provisions.²¹²²

Amendment in Indian Penal Code, 1860 Post Nirbhaya case in 2013²³

Section 354A²⁴ Sexual harassment

¹⁶ Apparel Export Promotion vs A.K. Chopra on 20 January, 1999

¹⁷ Aman Aditya\Sexual Harassment of Women at Workplace” Law Audience Journal, Volume 3 & Issue 4, Law Audience\ Pag 221 to 234. 2022, <https://www.lawaudience.com/volume-3-issue-4/>

¹⁸ Medha Kotwal Lele & Ors. V. Union of India & Ors¹³³

¹⁹ *Id*, at 7.

²⁰ Ranjan Jyoti Sarma\ Sexual Harassment in work place and Legal protection therein\Vol 9, Issue 10\ Quest Journals Journal of Research in Humanities and Social Science, 2021, pp: 84-90\ <https://www.questjournals.org/jrhss/papers/vol9-issue10/Ser-5/L09108490.pdf>.

²¹ *Id*, at 7.

²² Damini Singh Chauhan\ Sexual Harassment At Workplace Is An Affront to Women's Fundamental Rights: SC\ Legal Service India (March 27, 2023, 9:20 PM) <https://www.legalserviceindia.com/legal/article-1858-sexual-harassment-at-workplace-is-an-affront-to-women-s-fundamental-rights-sc.html>

²³ Mukesh & Anr vs State For Nct Of Delhi & Ors on 5 May, 2017

²⁴ The Indian Penal Code, 1860, 354A, No. 45, Acts Imperial Legislative Council 1860 (India).

Section 354B²⁵ Forcing a woman to undress

Section 354C.²⁶ Watching or capturing images of a woman without her consent (voyeurism).

Section 354D²⁷ follows a woman and contacts her or tries to contact her despite her saying she does not want contact. Monitoring a woman using the internet or any other form of electronic communication (stalking).

TYPES OF WOMEN HARASSMENT IN THE WORKPLACE:

Women harassment in the workplace can take many forms, including:

Sexual Harassment: This includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.²⁸ Sexual Harassment refers to any form of sexual harassment, including unwanted sexual acts, approaches, or behavior. Other forms of harassment will manifest or become more severe, but sexual harassment has an immediate effect. Sexual harassment is one type of illegal employment discrimination that is dealt with immediately.²⁹

Sexual harassment is defined as:

- Distribution of pornographic content³⁰
- Sexual posters are distributed.
- Using sexual jokes or sexual remarks
- Sexual contact with minors
- Sexual gestures that are indecent

Verbal Harassment: This includes derogatory comments, insults, and other language that are offensive or demeaning. The most evident and frequently occurring kind of workplace harassment is probably verbal or written. Here are some cases where this can happen:

- sending emails with harmful racial or religious jokes or imagery
- Repeated requests for dates or sexual favors in person or via SMS
- Asking about family history of diseases or genetic disorders
- Derogatory remarks about someone's disability or age
- Mimicking a foreign accent behind his back

²⁵ The Indian Penal Code, 1860, 354B, No. 45, Acts Imperial Legislative Council 1860 (India).

²⁶ The Indian Penal Code, 1860, 354C, No. 45, Acts Imperial Legislative Council 1860 (India).

²⁷ The Indian Penal Code, 1860, 354D, No. 45, Acts Imperial Legislative Council 1860 (India).

²⁸ getimpactly\ <https://www.getimpactly.com/post/types-of-harassment> Last Visited 01\04\2023

²⁹ *Id.*, at 8.

³⁰ *Id.*, at 8.

The biggest thing to watch out for these days is technology. For example, if one employee forwards an email with a pornographic image, it can spread to the point where everyone in the office can see it—even if the original sender didn't intend to.

Physical Harassment:- Physical contact such as touching, grasping, or brushing up against someone without their consent is considered physical harassment. Physical harassment can be a little harder to spot because it can sometimes be very subtle.

- Obscene hand gestures or other gestures intended to convey a curse
- Using erotic facial expressions
- Often deliberately following or standing too close to a person
- Play music with offensive or degrading language
- Often the person doesn't even need to be harassed. So, for example, if two co-workers are joking and one is making inappropriate hand gestures and the other sees them, they may feel uncomfortable and even harassed.

Psychological Harassment: This includes behaviors that are intended to intimidate, belittle, or humiliate a person, such as threats, ridicule, or sabotage. Harassment has a negative impact on a person's mental health.³¹ Victims of psychological harassment often experience feelings of rejection or humiliation on a professional or personal level or both. Their psychological damage spreads and affects their work, social life, and physical health.³²

Below are some examples of psychological harassment in the workplace:

- Isolating or denying the presence of the victim
- Defaming or belittling the feelings of victims
- Discredit or spread rumors about the victim³³
- Objecting or challenging what the victim says³⁴

REFORMS IN LEGISLATION:

Governments around the world have introduced various legislative reforms to address the issue of women's harassment in the workplace. Some of the key reforms include:

Anti-Discrimination Laws: Many countries have introduced anti-discrimination laws that prohibit discrimination based on gender, race, age, religion, or any other protected characteristic. These laws provide a legal framework for women to report harassment and seek

³¹ Getimpactly, *supra* note 19, at 10.

³² Getimpactly, *supra* note 19, at 10.

³³ Getimpactly, *supra* note 19, at 10.

³⁴ Getimpactly, *supra* note 19, at 10.

legal redress. The issue of sexism has affected the pace of women's empowerment in India. Sexism in all areas of action must be controlled. Women must be empowered to participate actively in decision-making at all levels and in leadership processes to achieve women's empowerment. They must receive the respect and fame they deserve, which they deserve on the basis of their achievements in society in order to fulfill their mission.

Sexual Harassment Policies: Many companies and organizations have introduced sexual harassment policies that define what constitutes sexual harassment and provide guidelines for reporting and addressing incidents of harassment. These policies also provide support and protection for victims of harassment.

Training Programs: Some companies have introduced training programs for employees on workplace harassment, including what constitutes harassment and how to prevent it. These programs can help raise awareness and reduce incidents of harassment.

LOOPHOLES IN LEGISLATION:

One such loophole is the definition of what constitutes harassment. In some cases, the definition may be too narrow, which means that certain behaviors may not be considered harassment even though they make women feel uncomfortable or unsafe. For example, if the definition only includes physical contact or explicit sexual advances, it may not cover verbal abuse or inappropriate jokes or comments.

Another loophole could be the lack of clear procedures for reporting and investigating incidents of harassment. If the procedures are not clearly defined or not followed, it can make it difficult for women to report incidents of harassment, and can also make it easier for the harasser to get away with their behavior. Finally, the issue of retaliation against women who report incidents of harassment can also be a significant loophole. If there are no effective measures in place to protect women from retaliation, they may be reluctant to report harassment, and the harasser may continue their behavior with impunity.

It is essential to address these loopholes to ensure that women are adequately protected from harassment in the workplace. Legislation must be carefully crafted and consistently enforced to ensure that it serves its intended purpose. Additionally, organizations should implement training programs to create awareness about harassment and provide support to those who have experienced it.

Despite the legislative reforms, there are still some loopholes that can make it difficult for women to report and address incidents of harassment. Some of the key loopholes include:

Limited Enforcement: In many cases, the enforcement of anti-harassment laws is limited, and perpetrators can often avoid punishment. This can make it difficult for women to report harassment and seek legal redress.

Lack of Accountability: In some cases, companies may not be held accountable for incidents of harassment that occur within their organization. This can make it difficult for victims to seek justice and can create a culture of impunity.

Inadequate Support: While sexual harassment policies and training programs can be effective, they may not provide adequate support for victims of harassment. This can make it difficult for victims to come forward and report incidents of harassment.

CONCLUSION AND SUGGESTION:

“As women, we must stand up for ourselves. We must stand up for each other. We must stand up for justice for all.”

– Michelle Obama

Sexual harassment of women is a violation of women's rights. Only a few grievances however lots of them continue to be silent because of the fear of society. In this situation now not simplest society violates but with the aid of remaining silent the victim herself violates her proper. even though there is numerous legislation that allows preventing such harassment of ladies but nevertheless they are growing in number specifically in the painting's vicinity and with a female child, accordingly to prevent the crime it's far very important to trade the questioning pattern of the society by means of treating and giving the ladies and guys at a same repute. so as to protect women from such crime it's miles very important to introduce various programs so that they will protect themselves from such sexual harassment in the employment places, in faculties, in colleges, in any place via any character recognized, or stranger, to introduce human rights inside the syllabus, and to spread the attention of human rights amongst the people, to present teachings of loving-kindness, equality, and humanity.

In conclusion, women's harassment in the workplace is a significant issue that requires immediate attention. Legislative reforms, including anti-discrimination laws, sexual harassment policies, and training programs, have been introduced to address the issue. However, there are still loopholes in the legislation that can make it difficult for women to

report and address incidents of harassment. Governments, Companies.

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