



## WORKPLACE AND SEXUAL HARASSMENT OF WOMEN: ANALYSIS OF AVAILABLE LEGAL RIGHTS AND GENDER JUSTICE

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**Abstract:** There are various purposes behind wrong conduct yet the main one is the lifestyle and the overall power and status of individuals in the overall population. The way individuals are brought up in India unequivocally impacts their direct in an affiliation. Women routinely need velour because of the way where they have been blended and are adjusted to suffer calmly. While men are raised with macho feelings, who view at females as a basic toy to play with and viably pass on these characteristics into the workplace. Such male-driven points of view make an air that licenses men the chance of improper conduct in the workplace, while women stay exposed. Women are vulnerable against Sexual provocation since they even more consistently require power and as often as possible work in dubious positions. In light of the fear factor women consistently leave to their fate rather than talking all the more noisily against prurient conduct. Since they don't have the foggiest thought where to go for the issue and how their whimper would be managed, they habitually keep pause and suffer in disrespect.

**Keywords:** Gender harassment, assault, coercion, unwanted sexual attention, ambient sexual harassment.

### I. INTRODUCTION:

Sexual harassment is any conduct of a sexual nature may create danger to the work of the victim, or undermine the personal dignity of the victim. It can manifest itself physically or psychologically. Its more savage and subtle forms may involve inappropriate verbal, affectionate gestures, or propositions of and sexual behavior. However, it can also ensure egregious forms and such as physical assault and sexual assault, or assault.

As pointed out Dixon, Chief Justice of the Supreme of Canada in *Jorden Vs Platy Enterprises<sup>1</sup> Ltd*, most cases of sexual harassment, the perpetrator abuses "a position of being able to import sexual requirements into the workplace thus negatively modifies the conditions of employees. who are forced to be satisfied with demands". Sexual harassment involves "the unwanted imposition of sexual demands in the context of an unequal power relationship".

There are a few of the associations commonly have the attributed reactions to inappropriate behavior: overlooking protests or badgering, terminating a harasser, or offering Sexual situations for harassment. Terminating a harasser may tackle a particular issue for the time being. Overlooking objections and neglecting to perceive inappropriate behavior just gives prolific ground to it to flourish. None of these systems are sufficient to react to, forestall, and end inappropriate behavior.

There is no handy solution, one-sizejacket does not fit into all answers addressing the inappropriate behavior. All things being equal, genuine and enduring change will require focused on reactions. Diverse work environment and industry arrangements, lawful structures, societies, and standards across industry areas intensely shape the experience of Sexual harassment and need to manage the reaction to it. Thelaborers regularly face language boundaries and are monetarily subject to the task to endure.

The vertical isolation and awkward nature of strength among the biggest drivers of inappropriate behavior all areas. To balance strength and jobs, require changing sexual norms and beliefs, underestimating the authority, appreciating paid work that women have generally accomplished, open doors for men to be more dynamic in taking care.

<sup>1</sup> <https://www.bopter.gov.in/assets/pdf/handbook-on-sexual-harassment-of-women-at-workplace2.pdf>

## Sexual Harassment in Workplace

The issue of Sexual harassment in work place is progressively exposing the unadulterated truth<sup>2</sup>. The instance of Tarun Tejpal, overseeing editorial manager of the news magazine Tehalka is a valid example. This specific case has welcomed this issue on the middle stage as more casualties are gathering fortitude to gripe such offenses.

After of Tarun Tejpal's case a public discussion is seething in the nation as to how to control the occurrences in future. This is on the grounds that the sexual measurement such cases have suggestions on close to home, mental, good and conjugal status of a person.

Inappropriate behavior occurs in the work environment due to undesirable activity or behavior, excludes person causing discomfort, annoying offense to the other. The larger part of such cases is coordinated towards ladies by men working in high situations in an association. Sexual harassment in a work environment is undesirable behavior because it influences conditions which has a considerable influence on the workplace<sup>3</sup>. Therefore, this issue should be viewed in light of its causes and potential solutions for its control<sup>4</sup>.

Inappropriate behavior in all domains can be seen. Workers of various fields are becoming victims of harassment or provocation from someone as a colleague or a boss. For restaurant workers it may come from medical caregivers, their patients, their clients etc. However, each of these associations accompanies distinctive strength elements. To protect the victims, reformers have suggested for cancellation of tips in every hotel industry which grows influence of customers have over their clients.

In India, in the absence of any statutory definition of sexual harassment, it was incumbent on the Supreme to make a necessary step. Based on international conventions and standards, the United Nations Committee on the Elimination of Discrimination Against Women, the Supreme Court has defined sexual harassment for first time in 1997 in the case judgment of Vishaka Vs State of Rajasthan<sup>5</sup> 6 SCC 241, AIR SC 3011. The definition is almost in *pari materia* with that by the CEDAW, the United Nations, and reads as follows:

Sexual harassment includes such sexually determined behavior either in a diverse way, or implicitly in the form of physical and advancing; a request or demand for sexual favors<sup>6</sup>. Any other unwanted verbal or non-verbal physical conduct is also included within the broad ambit of sexual nature.

Dr. A.S. Aline<sup>7</sup>, CJ in Apparel Expert Pronmticiit Council Vs A.K.Chopra [(1999) | SCC 759; AIR 1999 SC 625] has held that "*sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favors and other verbal or physical conduct with sexual overtones, whether directly or by implication particularly when submission to or rejection of such a conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably intervening with her work performance and had the effect of creating intimidating or hostile working environment for her.*"

On a few occasions, sexual harassment is also observed forced play, where a man demands courtesies in exchange for benefits which he can get rid of in his own position. Every now and then men are focused in the workplace considering the fact that even having done their best, they don't get the appropriate one, while women having few abilities favored for to have reasonable sexual relations.

This sometimes causes disappointment and these men have inappropriate behaviors to overcome their pressure. To check inappropriate behavior, an association ought to have obvious arrangement to enroll

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<sup>2</sup>Smith, B. (1991). The truth that never hurts. *Third World women and the politics of feminism*, 632, 101.

<sup>3</sup>DeSouza, E. (2004). Women's and men's reactions to man-to-man sexual harassment: Does the sexual orientation of the victim matter?. *Sex Roles*, 50(9), 623-639.

<sup>4</sup>Marshall, A. M. (2003). Injustice frames, legality, and the everyday construction of sexual harassment. *Law & Social Inquiry*, 28(3), 659-689.

<sup>5</sup> <https://indiankanoon.org/doc/1031794/>

<sup>6</sup>Zgheib, P. W. (2019). Sexual Harassment Laws and Their Impact on the Work Environment. In *Social Issues Surrounding Harassment and Assault: Breakthroughs in Research and Practice* (pp. 657-683). IGI Global.

<sup>7</sup> <https://www.hindawi.com/journals/mpe/2013/343171/>

grumbings of such nature and technique for making a disciplinary move. It seems to be discriminatory when woman has reasonable grounds to believe that her complaint or objection would put her at a disadvantage in connection with her job or work, including a request or promotion, she hesitates to bring her grievance before the authorities<sup>8</sup>.

Such rules are as of now accessible through Supreme Court judgment, its solitary its usage that is required. Each association should have a compelling business strategy that ought to guarantee all around arranged vocation ways dependent on legitimacy to diminish the weakness of people and badgering by the individuals who misuse their capacity and authority. There should be mindfulness among the staff individuals about inappropriate behavior and the outcomes they may confront on the off chance that they enjoy such a demonstration. They should realize their social obligations to forestall such occurrence in their association. The staff part exposed to inappropriate behavior should initially whine to the panel individuals comprised for such purposes in the association, prior to setting off to the police.

Sexual harassment continues to be a major barrier to opportunity and treatment for women. As a result, employees are under increased pressure to tackle this issue. Resentment towards incidents of sexual harassment increases<sup>9</sup>.

Underlining the meet for representatives to do whatever it may take to battle the hazard of inappropriate behavior at work J.S. Verma, CJ said for the Supreme Court of India in *Vishaka Vs State of Rajasthan*<sup>10</sup> "It shall be the duty of the employer or other responsible person in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the proceeding for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required".

In India, the existing civil and penal laws do not properly shield women from sexual abuse in the workplace. Since the Supreme Court recognized, and rightly so, that enacting such legislation would take a long time, and it is appropriate and expedient to provide certain rules for workers and other responsible persons in work places or other organizations to ensure that women are not sexually harassed and that their human rights are protected. The Court provided these guidelines in order to "provide for the effective implementation of the basic human right of gender equality and guarantee against sexual harassment and abuse, especially sexual harassment and abuse," as stated in Article 32 of the Constitution.

The Apex Court made it crystal clear that these "guidelines and norms" must be followed at all work places and other institutions before legislation is enacted for the purpose. This will be considered the law as proclaimed by this court under Article 141 of the Constitution." The court also stated that these guidelines would not affect any rights granted under the Protection of Human Rights Act, 1993.

"All workers or individuals in charge of work places, whether in the public or private sector, should take reasonable measures to avoid sexual harassment" Sri J.S.Verma, CJ<sup>11</sup>, added in the *Vishaka Case*. The Supreme Court ordered the workers to take the following preventive measures, "without exception to the generality of this duty."

(a) The express prohibition of sexual harassment at work, as described in this judgement, should be announced, written, and distributed in a timely manner.

(b) Government and public sector bodies' conduct and discipline rules/regulations should provide rules/regulations banning sexual assault and provide for effective sanctions against offenders.

(c) In the case of private employers, steps should be taken to incorporate the above restrictions in the Industrial Employment (Standing Order) Act, 1946's standing orders.

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<sup>8</sup>Hebert, L. C. (2007). Why Don't Reasonable Women Complain about Sexual Harassment. *Ind. LJ*, 82, 711.

<sup>9</sup>Ehrenreich, R. (1999). Dignity and discrimination: Toward a pluralistic understanding of workplace harassment. *Geo. LJ*, 88, 1.

<sup>10</sup><http://www.legalserviceindia.com/legal/article-374-case-analysis-vishaka-and-others-v-s-state-of-rajasthan.html>

<sup>11</sup> <https://www.cpj.edu.in/wp-content/uploads/2018/05/law-journal-2014-final.pdf>

(d) Appropriate work conditions in terms of work, leisure, health, and hygiene should be given to further ensure that there is no hostile atmosphere against women at work, and no woman employee should have fair grounds to think she is disadvantaged in her employment."

The ILO has stated that the concept of workplace should not be limited to "the physical environment of the workplace," but should also include "accesses that a perpetrator has to the harassed as a result of a job situation or work relationship." The explanation is obvious: "sexual harassment is not limited to workplaces in the context of a single physical space where paid work is performed for eight hours per day; it can occur at conferences, on business trips, at company-sponsored social gatherings, or over the phone or via electronic mail."

The Supreme Court ruled in *Vishaka Vs State of Rajasthan* that all workers, whether in the private, government, or public sector, must clearly state in their conduct and discipline rules that any act that constitutes sexual harassment will be regarded as a disciplinary offence. Such activities should be specifically prohibited by administrative laws, which should also include sufficient punishments for offenders.

The phrase "protection from sexual harassment or bullying"<sup>12</sup> should be added to the definition of "working atmosphere." Employees should ensure that they are not subjected to sexual intimidation or abuse when taking precautions for optimum protection and health at or related to work. Employees should "protect the employee from provocation to the greatest degree possible." Aggression and violence are actions in which an employee is mentally or physically abused, intimidated, or assaulted in situations that are directly related to his or her employment."

The Supreme Court's guidelines 6 and 7 in "*Vishaka's Case*" deal with the employee's duty to create an appropriate complaint process for dealing with sexual harassment allegations. The following is a list of them:

- 6th Complaint Mechanism – For resolution of the victim's complaint, an effective complaint mechanism should be established in the employee's organisation. Such a complaint process should ensure that complaints are handled in a timely manner.
- 7th Complaints Committee – The complaint mechanism listed in (6) above should be sufficient to include, as required, a complaints committee, a special counsellor, or other support service, as well as ensure compliance.

A woman should lead the complaints committee, and women should make up at least half of its members. Furthermore, to avoid excessive interference or influence from senior levels, such a complaints committee should include a third party, such as a non-governmental organisation (NGO) or other organisation that is familiar with the situation of sexual harassment.

The complaints committee must submit a written report to the relevant government department detailing the complaints received and the actions taken. Employees and the individual in charge will also report to the Government Department in accordance with the above stated rules, including the grievances commission's findings.

A three-judge bench of the Supreme Court, consisting of S. Rajendra Bebu, K.G. Balakrishnan, and G.P. Madhur JJ, further guided in *Medha Kotwal Lele Vs Union of India*<sup>13</sup> [WP(Cri) No. 173-177 of 1999] held that "*The complaints committee, as anticipated by the Supreme Court in its Vishaka Case judgement, would be considered to be an investigation authority for the purposes of the Central Civil Service (Conduct) Rules 1964, and the complaints committee's report will be presumed to be an inquiry report under the CCS Rules. As a result, the administrative committee will proceed in compliance with the rules on the report*"<sup>14</sup>.

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<sup>12</sup><https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>

<sup>13</sup> <https://www.escri-net.org/caselaw/2013/medha-kotwal-lele-ors-v-union-india-and-others-2012-insc-643>

<sup>14</sup> <https://www.casemine.com/judgement/in/5811803b2713e179479885e5>

In Vishaka's case, J.S. Varma, CJ, had spoken our Supreme Court, "*Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance*<sup>15</sup>".

In Apparel Export Prevention Council Vs A.K. Chopra, Dr.A.S. Aluned CJ made a similar observation. "*It is pointless to argue that an early instance of sexual assault at work constitutes a violation of the universal rights to gender equality and life and liberty – the Constitution's two most precious fundamental human rights*".

## II. CONCLUSION:

Despite several years of consideration and lawful action, experience reveals that sexual harassment remains a real and inevitable problem virtually for all the industries and workplaces. No environment is immune to lewd conduct or unaffected by its consequences: sexual provocation endangers people's lives, livelihoods, financial freedom, and chances of endless casualties, and it costs businesses not only in legal costs but also in lost profitability, assurance, viability, and capacity.

Sexual abuse in the workplace is a sensitive subject. It can't be tested either by providing individual data to employees about improper conduct strategies or by relying on disciplinary action. The organisation must take a constructive role, provide social assistance, and discuss this viewpoint as part of the work schedule. To create a pleasant working atmosphere, the workers must maintain a thorough, solid, and conscious environment in the workplace. Similarly, the organisation must assist the victim of improper conduct in overcoming the negative consequences of the experience. Finally, every working woman must recognise that the time to fight back against such deceptions has finally arrived. It is at this point where sexual harassment in the workplace must be investigated and hence stopped.

## REFERENCES:

1. <https://www.boptter.gov.in/assets/pdf/handbook-on-sexual-harassment-of-women-at-workplace2.pdf>
2. <http://www.legalserviceindia.com/legal/article-374-case-analysis-vishaka-and-others-v-s-state-of-rajasthan.html>
3. <https://www.cpj.edu.in/wp-content/uploads/2018/05/law-journal-2014-final.pdf>
4. <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>
5. <https://www.escr-net.org/caselaw/2013/medha-kotwal-lele-ors-v-union-india-and-others-2012-insc-643>
6. <https://www.casemine.com/judgement/in/5811803b2713e179479885e5>
7. <https://indiankanoon.org/docfragment/635207/?big=3&formInput=sexual%20harassment>

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<sup>15</sup> <https://indiankanoon.org/docfragment/635207/?big=3&formInput=sexual%20harassment>