

**AN ANALYSIS OF SEXUAL HARASSMENT OF WOMEN: WITH SPECIAL  
REFERENCE TO WORKPLACE**

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**ABSTRACT**

*Certain classes of people like women, children, backward castes, tribal and others are still considered to be backward in the race of equality. They are still lacking behind from the stronger groups. Being so vulnerable by reason of may be physical strength, education, age, illness or caste there are still chances of their being exploited by others time and again. When it comes to women, either an adult woman or a female child both are being exploited, assaulted and embarrassed in several ways. These sexual offenses are being committed at a very large scale, moreover most of these crimes are even not reported by the victim because of fear and pressure from the society and the constant threat by the accused. Even if it is reported in the court, generally the so called accused are being acquitted due to unavailability of witnesses and it becomes very difficult to prove his offense. As a result, it causes huge injustice to the harassed women or to the victim and her family members. In such situations, what is the remedy which should be given to the women, where should she approach for justice? In what way her and her family members sufferings should be taken care of? These are certain questions which every victim wants to address from the society. India is known for its culture and heritage, where women are considered as devi and laxmi and that the status of women in terms of respect to her dignity must be above all. But in present scenario it is not the same. Now, women are exploited by their own husbands at home, and are being sexually harassed at workplace by their colleagues and several other crimes are being committed against women. This paper will deal with various crimes against an adult woman as well as a female child in India, their legal provisions and the approach of Indian judiciary towards these atrocities.*

**Keywords:** *Women, Sexual Offenses, workplace, accused, Crimes, assault.*

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### **Introduction**

Everyone on this planet desire for equality or the right to equality in every respect. Each living being must have this right or must have the opportunity to have this very fundamental right within himself. In India, we have this right as our fundamental right enshrined under Article 14<sup>2</sup>. It talks about two segments, one is 'equality for all' and the other is, 'equal protection for all.' It states, that the state shall not deny to any person equality before the law or the equal protection of the law<sup>3</sup>. Nowhere, article 14 speaks about any differentiation concerning the gender, that only males have the right to equality or the females have the right to equality. It simply uses the expression, 'any person', which signifies the inclusion of every person, male, female, citizens, non-citizens everyone. But what has been witnessed from time and again that, one segment of our society i.e. women, they still lagging, they still cry for equality, still they are being denied to equality in most of the sphere, beat it the workplace, personal life everywhere. They are subjected to cruelty, domestic violence, ill-treatment by their family members, children etc. time and again they have been referred to as weak. Whatever is the reason, the question comes to our mind that in this 21<sup>st</sup> century also why women are subjected to such offences, such crimes including heinous crimes like rape, assault, dowry deaths etc. just because they are not that strong physically as compared to men, they are being dominated? Today, large no. of sexual offences is being committed against women. The situation even gets more worst when the women against whom such offence has been committed, do not report about it because of fear and pressure from the family member itself. Even if it is reported in the court, generally the so-called accused are being acquitted due to unavailability of witnesses and it becomes very difficult to prove his offence. As a result, it causes huge injustice to the harassed women or the victim. In such situations, what is the remedy which should be given to the women, where should she approach for justice? In what way she and her family members sufferings should be taken care of? Especially in today's time, where women want to work independently to fulfil her desire and passion, some elements of the society do not let her work

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<sup>2</sup> The Constitution of India.

<sup>3</sup> The Constitution of India, art. 14.

peacefully. Quite often we come to hear about incidents of sexual harassment at the workplace against women. India is known for its culture and heritage, where women are considered as Devi and Laxmi and that the status of women in terms of respect to her dignity must be above all. In the present scenario, its women are being sexually harassed at the workplace by their colleagues and several other crimes are being committed against women, which does not allow her to work peacefully. In ancient times women were respected, they were worshipped and treated with dignity. Slowly and steadily the status of women was degraded and lowered by the society which resulted in a male-dominated society. According to many smiriti, if women are not respected then all the forms of worship is fruitless.<sup>2</sup> Earlier also during Mahabharata times and post-Mahabharata women were treated as chattels, they were not being treated equally with that of men. Even in today's male dominated society, the status of women is still miserable especially when it comes to crime and violence.

In India, especially in rural parts of the country which covers more than 60% of the nation's population, still, there is an urge for the male child. Parents eagerly wait for their male descendants because they think that only male child can give them salvation, only a male child can uplift the status of living and female child is always considered to be a burden upon the family. They are only the liabilities upon parents so since their birth no care is being given to the girl child. Several facilities like education, primary care, proper nutrition, consultancy etc. are only given to the male child. Since their inception that is from birth itself, the female child faces several discriminations which indeed begins from their own house from her parents and family members. Secondly, as she grows, she is subjected to several other crimes or violence from the society which are innumerable like trafficking, prostitution, rape, abduction, molestation, eve-teasing, acid attacks, dowry, cruelty, marital rape etc. All these factors reveal the real position of women in our society.

### **Sexual harassment at Workplace**

Sexual harassment at the workplace is also prevailing to a larger extent nowadays. The constitution of India under Article 14<sup>4</sup> and under article 15<sup>5</sup> provides fundamental rights to every citizen of India. But unfortunately, the rights of women who are working with some organisations, institutions or any other place, their fundamental rights are being violated. They are being harassed, exploited by their authorities or person sitting on the top position of their workplace or even by their colleagues, which makes them uncomfortable and annoying to work peacefully without any such discomfort. In recent years several incidents of sexual harassment at the workplace have been reported against several corporations. But because of the lack of proper redressal mechanisms, nothing fruitful came out of it. Sexual harassment is of two kinds, firstly where the women are being exploited by her immediate boss or authority, where her career, performance is at stake and that is the reason they are easily being harassed. Secondly, by their opposite male colleagues, which makes the environment, not at all suitable for them to work with. Studies done in India, by various organisations like the Lawyers Collective, and individuals, have concluded similar findings, about most women respondents not complaining to supervisors or the management about their experiences of sexual harassment at work and dealing with it on their own. They did not report due to fear for further harassment, apprehension of adverse effect on their employment, lack of confidence in the complaint's mechanism, possible defamation or threats from the perpetrators and other such reasons. Generally, women do not report in such cases because of fear of continuous harassment, exploitation and fear of being fired from their respective organisation.

Conducts which amount to sexual harassment may be anything which discomforts a woman or any unwelcomed sexual act such as touching, showing pornography, whistling, demand for physical favours, sexual comments etc. Some instances of sexual harassment at the workplace:

- A young girl was sexually harassed at workplace by the senior-most member of her organization, the Vice President.<sup>6</sup>

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<sup>4</sup>The Constitution of India, art. 14.

<sup>5</sup>The Constitution of India, art. 15.

<sup>6</sup> The Times of India, Col.2

- A Women was harassed by her coach in K D Singh Stadium<sup>7</sup>
- A 37-year-old woman was harassed by her chairman-Marine Academy Belapur<sup>8</sup>

In *Medha Kotwal Lele and Others v. Union of India*<sup>9</sup>, The Supreme Court has guidelines and notices to all the state functionaries especially the bar associations to follow and adopt the guidelines of Vishaka's case seriously. In *Binu Tamta and Another v. High Court of Delhi and others*<sup>10</sup>, the apex court took the cognizance that any women attending courts by any capacity may be as lawyers, clients or any administrative staffs must be protected against sexual harassment. In *Vidya Akhave v. Union of India, Department of Women & Children*<sup>11</sup>, Bombay High Court held that proper mechanisms must be provided by the employer of every corporation and any issue regarding sexual harassment must be heard and resolved within a reasonable time. In *S. Rajesh v. The Secretary*<sup>12</sup> it was duly held by the court that setting up proper committees for redressing sexual harassment issues is necessary for every corporation. In *S.Ranjini v. State of Tamil Nadu*<sup>13</sup> it was held by the court that every corporation have to mandatorily follow every provision of the Sexual Harassment Act. In *M. Daisyrani v. The Institute of Road Transport*<sup>14</sup>, it was held by the court that it is the duty of every employer to create such an environment in the workplace where every women employee could work without any discomfort. In *Dr Mrs R. Sethulatha v. The Secretary*<sup>15</sup> the secretary to higher education was directed to communicate and issue the circular for the implementation of the Sexual harassment Act to every college and to implement the provisions of the said act accordingly. In *Gaurav Jain v.*

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<sup>7</sup> The Times of India Col.2

<sup>8</sup> Ibid

<sup>9</sup> *Medha Kotwal Lele and Others v. Union of India* AIR 2013 SC 92

<sup>10</sup> WPC 2013. No. 162 of 2013 Order dated 17th July, 2013

<sup>11</sup> *Vidya Akhave v. Union of India, Department of Women & Children* Bombay High Court Writ Petition Number 796 of 2015. Decided on Oct. 4, 2016.

<sup>12</sup> Madras High court Writ Petition Number 25803 of 2015 and W.M.P. No. 1,2 & 3 of 2015. Decided on August 29, 2017

<sup>13</sup> Madras High court Writ Petition Number 1812 of 2015. Decided on August 17, 2017

<sup>14</sup> Madras High court Writ Petition Number 18662 of 2017. Decided on July 25, 2017

<sup>15</sup> Madras High court Writ Petition Number 18130 of 2017 and W.M.P. No. 19672 of 2017. Decided on July 25, 2017

*Hindustan Latex Family Planning Promotion Trust & Ors*<sup>16</sup> the court held that in case of any enquiry concerning sexual harassment, it is not always necessary to follow the strict rule of evidence. The committee could apply its procedure by following the principles of natural justice. In *Jishu Sengupta & Others v. The State of West Bengal & Another*<sup>17</sup> it was held that any sexually coloured remarks come within the ambit of sexual harassment at the workplace.

Until Vishaka's case, there were no law no guidelines regarding the protection of women from sexual violence at the workplace. However, post Vishaka judgment several guidelines have been laid down keeping in mind the Convention on the elimination of all forms of discrimination against Women. (CEDAW).

In *Vishaka and others v. State of Rajasthan*<sup>18</sup> Apex Court gave several guidelines for the protection of women at workplace:

- Express prohibition of sexual harassment at work should be notified, published and circulated in appropriate ways.
- The rules of government and public sector bodies relating to conduct discipline should include rules prohibiting sexual harassment and provide for adequate and appropriate penalties against the offender.
- As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (standing orders) Act, 1946.
- Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee women should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

The complaint mechanism should be adequate to provide a complaint committee, a special counsellor or another support service including the maintenance of

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<sup>16</sup> Delhi High court L.P.A. Number 145/2015. Decided on August 6, 2015.

<sup>17</sup> Calcutta High Court CRR 1284 of 2016 with 1285 of 2016 with 1212 of 2016 with 1213 of 2016. Decided on November 4, 2016.

<sup>18</sup> *Vishaka and others v. State of Rajasthan* AIR 1997 SC 3011

confidentiality. The committee shall be headed by a woman and not less than half of its members shall be women. Further to prevent the issue of any undue pressure or influence from any senior member, the committee shall include a third party, either an NGO or some other body who is familiar with the issues of sexual harassment. The committee shall make an annual report and the action taken by them.

Later, after several years of Vishaka's case, the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted finally in the year 2013 for the prevention of sexual harassment at workplace in India. The Act defines sexual harassment as unwelcome acts or behaviour (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature<sup>19</sup>. The main objective of the Act was the protection of the women, the prevention and redressal of sexual harassment complaints. It includes any one or more of the following unwelcome acts either directly or indirectly:

1. Physical Contact and advances or
2. A demand or request for sexual favours or
3. Making sexually coloured remarks or
4. Showing pornography or
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.<sup>20</sup>

Other acts which may amount to sexual harassment at the workplace may include:

- implied or explicit promise of preferential treatment in her employment; or
- implied or explicit threat of detrimental treatment in her employment; or
- implied or explicit threat about her present or future employment status; or
- interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- humiliating treatment likely to affect her health or safety

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<sup>19</sup> The Sexual harassment Act, 2013, s.2(n)

<sup>20</sup> *Medha Kotwal Lele V. Union of India and others*, (2013) 1 SCC 297

The said act, provides for the establishment of internal complaint committee in every offices, which shall have a presiding officer who shall be a women employed at senior level, secondly not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge and one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

With regard to the effectiveness and implementation of the act, it has made it clear that if any of the committee members violates any of the provisions of this act, particularly section 16 or has been convicted of an offence under any law for the time being in force is pending against him or has been found guilty in any disciplinary proceedings is pending against him or has so abused his position as to render his continuation in office prejudicial to the public interest, then such member or presiding officer shall be removed from the committee.<sup>21</sup>

However, with regard to the domestic workers, the present act is not that effective as they are not covered under the said act. It places main responsibility for the implementation of the act on the employer, whereas it is also the responsibility of the state to ensure it properly.

### **Rape**

With regard to the legal provision dealing with rape under section 375 IPC<sup>22</sup> it applies to both the female child as well as to any adult women equally, no specific provision for a female child has been given. Sexual offences such as rape against any female child should be kept in the category of more rigorous crime and for that punishment should also be rigorous. But there is no special provision concerning rape against a female child and sexual offences against an adult woman as well as a female child are kept at par. As far as the expression of sexual intercourse is concerned, the clear definition or meaning of the term has not been defined in IPC. What all should include within the expression of sexual intercourse and what not. For example, as per

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<sup>21</sup> The sexual harassment Act, 2013, s.4(5)

<sup>22</sup> The Indian Penal Code, s.375.



the definition and judicial approach, anal sex, as well as oral sex, are not considered within the purview of rape. Even if such acts are done forcibly on part of the female, still are not considered as rape.<sup>23</sup> Secondly, the word penetration is also not justiciable for the female child. As far as an adult woman is considered, penetration is possible and once the penetration is done it will fall under the category of rape. That is to say to prove rape penetration has to be there. But this cannot be applied equally concerning a female child because it is not possible to penetrate with the same level. It is not biologically or physically possible in the body of a female child of tender age. Therefore, because of lack of proof that there has been an actual penetration, the accused are not held liable for rape as such and maybe they are charged with some other offences and as a result lesser punishment is given to them and maybe a fine of merely Rs.25000/- to be given to the victim, which in no way compensates the irony and the sufferings of the victim. Thirdly comes a minority or majority of the victim. If it is difficult for the prosecution to prove that the victim is minor then it is more difficult to prove that she did not consent to the act. As a result of the benefit of the doubt, the accused is not charged and is released in most of the cases. Consent of a girl under eighteen years not valid in law. According to clause 6 of Section 375, IPC, A girl under eighteen is considered incapable of giving consent for sexual intercourse. But before The Criminal Law (amendment) 2013, a girl under sixteen was considered incapable. In *Sidheshwar Ganguly*<sup>24</sup> the supreme court held that the consent of the victim is immaterial when she happens to be under sixteen years of age on the date of the occurrence and in the absence of a birth certificate, the conclusion as to the age could be drawn from the fact and circumstances including physique of the person and medical examination. In *Sanjay Patangrao Jagtap v/s State of Maharashtra*<sup>25</sup> where it was proved that the accused had sexual intercourse with a minor girl of 5 years and the evidence was found that the semen was found on the nicker of the victim. Hence, the accused was liable under section 367(2)(f) of the Indian Penal Code. In *Dhananjaya Chatarjee v/s State of W.B.*<sup>26</sup> accused was held liable for the offence of

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<sup>23</sup> The Indian Penal Code, s.375.

<sup>24</sup> *Sidheshwar Ganguly* AIR 1958 SC 143

<sup>25</sup> *Sanjay Patangrao Jagtap v/s State of Maharashtra* AIR 2004 Cr.LJ 1101 (Bom.)

<sup>26</sup> *Dhananjaya Chatarjee v/s State of W.B* AIR 1994 SC 220

rape and murder of a minor girl of 8 years by the security guard of her school. The court gave death sentence to the accused and held it to most inhuman and barbaric act. In *Narayanamma v/s State of Karnatka*<sup>27</sup> Rape of a minor girl aged 14 years. The Supreme Court did not enhance the sentence of three-year rigorous imprisonment passed by the Trial Court. Held, merely because the prosecutrix was simple enough to repose confidence in the accused persons and stayed with them in a room in a hotel, it cannot be held that she was a consenting party.

### **Sexual Abuse**

Sexual abuse is something where the child is involved in any sexual act, either by force or unknowingly and where he/she does not know the implications of such an act. Sexual abuse is also very prevalent among the female child. There are instances where the child is not even aware that they have been sexually abused, maybe by their elderly relatives, servants or by some other outsiders. In the case of the child, consent is immaterial because they don't know the consequence of or the implications of such sexual acts.

### **Sexual Assault**

It is also very common in India. One of the basic principles of criminal law which states that in criminal cases benefit of doubts should always be given to the accused if there is even 1 per cent chance of any doubt against him, which results in acquittal of the offender very easily. Proving something beyond any reasonable doubt that too in cases of sexual violence is difficult for the prosecution and sometimes on a want of lack of injury on the body of the victim also leads to the conclusion that the accused did not commit the offence.

It has also been found that India is one of the topmost countries indulged with sexual violence.<sup>28</sup> The total number of sexual offences, including rape has increased to a larger extent year by year. The most devastating was the gang-rape incident of a 23 old Delhi girl who was brutally raped and thrown on the road as a result of several physical injuries she died. This incident shook the whole nation and lead to an

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<sup>27</sup>*Narayanamma v/s State of Karnataka* AIR 1994 SC 728

<sup>28</sup> The survey conducted by Thomson Reuters foundation 2018

amendment in our criminal law. But stricter laws also did not do any better to society. Still, there is no control or no decrease in sexual offences against female.

### **Outraging the modesty of a women**

The term modesty is not defined under the Indian Penal Code. It depends on the facts and circumstances of each case as to whether it constitutes modesty or not. In *Major Singh*<sup>29</sup>: In the case of Major Singh, the accused had caused injuries to the vagina of a seven-and-a-half-month child by fingering. Held, the accused was liable for outraging the modesty of the child under section 354 IPC. The court held that the essence of a woman's modesty is her sex, young or old, intelligent or imbecile, awake or sleeping, the women possess modesty capable of being outraged. Thus, whoever uses criminal force to her with intent to outrage her modesty, commits an offence under section 354, IPC Intention is the gist of the offence- it is not every act that is criminal. To bring an assault within section 354, IPC the act must be done with the intention or knowledge that it is likely to outrage the modesty of the person regarding whom the act is done.

In *Ram Das v/s State of West Bengal*<sup>30</sup> the accused was charged for having committed an offence under section 354 IPC.

### **Conclusion**

At last it can be concluded that despite having a specific action concerning the sexual harassment of women at the workplace, it has been observed that it is not being implemented properly in an effective manner at all places. Ineffectiveness is also due to a lack of awareness among the society and also due to limited redressal mechanism. It has to be implemented not only by providing a proper plan chart for redressal of any complain rather should be implemented by educating, sensitization and bringing awareness among male members of the society at large. Women are being tortured in their own home as well as at workplaces by their family members, superiors, colleagues etc. No nation can develop without providing equality to all its citizens in all the aspects. Any kind of violence against any women of whatever age she may be shall not be tolerated at any cost. Role of several NGO's plays a significant role in

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<sup>29</sup>*Major Singh* AIR 1967 SC 63

<sup>30</sup>*Ram Das v/s State of West Bengal* AIR 1954 SC 711

strengthening the status of women in society especially those women who have no means to address their grievances and to get justice. Also, the state instrumentalities should take care that whether the provisions of the Sexual harassment Act are being strictly followed by every state agency or not and the same applies with every organisation, corporations either government or private. We should also try our best to give effect to all the guidelines provided by the international conventions on elimination of all forms of discrimination against women (CEDAW) as well as the guideline, rules and regulations given by our Judiciary time and against to combat with this situation of crime against the women in any part of the country.