

## AN ASSESSMENT OF SEXUAL HARASSMENT OF WOMEN IN INDIA

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### *Abstract*

Even though there are various laws in place to combat sexual harassment, India is experiencing an increase in the number of occurrences. It unquestionably obstructs women's constitutional and fundamental rights to equality, justice, and dignity. Because the entire concept of sexual harassment revolves around the individual's consent, it can also be defined as an unwelcome act of physical contact, explicit or implicit promise, demand, or request for sexual favours, screening pornography, or any act of physical, verbal, or nonverbal conduct that humiliates and threatens the health and safety of a woman falls within the meaning of sexual harassment. In India, a woman is sexually harassed every twelve minutes, according to the National Crime Records Bureau (NCRB). Despite the efforts of numerous government entities to address the issue, this continues to be the case. It's crucial to remember that sexual harassment victims frequently experience emotional and psychological suffering, such as stress, depression, and anxiety. They frequently have low self-esteem and confidence. As a result, it's even more vital to talk about sexual harassment and come up with concrete answers. The purpose of this article is to go into this in further depth. The article begins by defining the term "sexual harassment" before delving into the numerous components of this serious act. According to the survey, the issue of workplace sexual harassment is at an alarming level and requires a prompt response from various companies and the government. A few recommendations are also made to address the issue of sexual harassment faced by women in India.

Keywords: Sexual Harassment, Fundamental Rights, Consent, Women, India.

### 1. INTRODUCTION

The position and status of women in India have long been one of the most complicated and dynamic issues in Indian history. It fails to be consistent, having been adored as a deity at first,

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then humiliated and subjugated, and eventually forced to fight for equality, recognition, and better opportunities.<sup>2</sup>

Women in the modern world, regardless of their sex, age, nationality, caste, background, or occupation, are exposed to various types of violence in different stages of life, including assault, sexual harassment, rape, verbal or physical abuse, stalking, trafficking, domestic violence, dowry-related deaths, foeticide, and infanticide.<sup>3</sup> According to popular belief, physical and biological changes in a man's physique, not only make him powerful but also allow him to establish domination over women. This idea not only lowers women's skills but also continues to be a major reason why males in India commit violence against women. "Violence is essentially an aggressive act that violates the autonomy and identity of another individual."<sup>4</sup>

The infamous Nirbhaya<sup>5</sup> gang rape case prompted individuals in India to express their feelings, frustrations, and fury over sexual harassment. Soon after that Verma committee was constituted, and subsequent changes and additions to the CrPC and IPC respectively were made when supporters not only shouted protests demanding justice for the victim but also informed the resistant government to adopt tough legislation for crimes against women in India.<sup>6</sup> The current scenario demonstrates that just adopting conventions, laws, and treaties hasn't fulfilled the intended aim. Even now, there is a broad and deep-rooted issue that demands addressing due to the increasing number of cases of women victimization have been increasing dramatically.<sup>7</sup>

## **1.2 RESEARCH OBJECTIVES**

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<sup>2</sup> Madhu Balaji S & S. Malaimangal, A Study on Sexual Harassment on Women in India, 7 International Journal of Current Advanced Research 9980, 9981-9985 (2018).

<sup>3</sup> Crime by Another Name: The Casual Acceptance of Sexual Harassment at Workplace must End, 48 Economic and Political Weekly 7, 7-9 (30 March 2013).

<sup>4</sup> D Nagasaila, Sexual Harassment as Sex Discrimination, 26 Economic and Political Weekly 1965, 1965-1968(24 Aug 1991).

<sup>5</sup> Mukesh & Ans. V. State of NCT of Delhi & Ors., AIR 2017 SC 2161.

<sup>6</sup> Rouf Ahmed Bhat & Prof. Dr Anita Deshpande, An Overview of Sexual Harassment of Women at Workplace in India: An Analytical Study, 6 International Journal of Innovative Research in Science, Engineering and Technology 14361, 14363-14368 (2019).

<sup>7</sup> Krithi Singh, The Movement for Change: Implementation of Sexual Assault Laws in India, 39 India International Center Quarterly 259, 259-269 (2013).

1. To comprehend the idea, meaning, as well as definition of sexual harassment.
2. To draw attention to the genesis and progress of sexual harassment legislation in India (with special reference to the Indian Penal Code and Criminal Procedure Code).
3. To highlight the numerous flaws and shortcomings in the current legislation adopted in India to combat sexual harassment.
4. To examine the government, state governments, and non-governmental organisations' efforts to combat sexual harassment of women in India.
5. Conduct a critical analysis of the issue, taking into account the aforementioned factors.

### **1.3 RESEARCH METHODOLOGY**

The research approach used in this study is doctrinal research, which generally relies on research papers, articles, and books to get information. The technique used is mainly descriptive and analytical in nature. To achieve the research's goals, both forms of data were utilised in the study. Secondary sources, such as journals and papers, have been relied upon. This research paper also incorporates data from a variety of online sources and trustworthy websites, all of which have been properly credited.

### **1.4 RESEARCH QUESTIONS**

1. What is the meaning, description and idea of sexual harassment?
2. What has been the history and enhancement of sexual harassment legislation in India?
3. What are the numerous flaws and gaps in the current laws that were passed by the legislature to protect women from sexual harassment in India?
4. What are the different preventative actions that the Indian government, state governments, and non-governmental organisations are using to combat sexual harassment?
5. To what degree are the enacted laws being applied, and is sexual harassment being prevented?

### **1.5 LITERATURE REVIEW**

#### **Sexual Harassment**

Sexual harassment is defined as “any unwelcome sexual advance, request for sexual favour, or other verbal, nonverbal, or physical conduct of a sexual nature that unreasonably interferes with work, is made a condition of employment, or creates an intimidating, hostile, or offensive environment,” according to The World Bank (1994). “Notably, the most significant feature in both definitions is the unwelcomed behaviour and hostile work environment, which exacerbates the impact of such actions on the receiver.”<sup>8</sup>

### **Sexual Harassment and Rape**

Furthermore, some authors have claimed that workplace sexual harassment is a type of rape. “There are several grounds to support the argument presented above. First, both are the result of one individual wielding authority over another. Second, just like an unwanted sexual encounter, sexual harassment entails sexual attention, which is both unwelcome and irritating. Third, males exploit their superior physical power to engage in sexual intercourse with women, just as they do with rape. Fourth, when the putative victims make a complaint, both rape and sexual harassment grow into psychological harassment.”<sup>9</sup>

### **Sexual Harassment and Discrimination**

When sexual harassment is combined with racial prejudice, the situation gets even worse.<sup>10</sup> For example, “a poll of 238 workers from five North American firms found that minority women are subjected to greater harassment than majority males, minority men, and majority women. In the Indian context, a research of 110 female respondents from various Higher Education Institutes in India found that being regarded and considered differently at work is also characterised by the respondents as an act of sexual harassment.”<sup>11</sup>

### **Sexual Harassment and Stereotypes**

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<sup>8</sup> Kaushik K., *Criminal Law (Amendment) Act, 2013: Sexual Offences*, LAWCTOPUS (March 17, 2017), <https://www.lawctopus.com/academike/criminal-law-amendment/>

<sup>9</sup> Gutek, B. A., & Morasch, B., *Sex ratios, sex role spillover, and sexual harassment of women at work*. *Journal of Social Issues*, 38(4), 55-74 (1982).

<sup>10</sup> Kreitner, R. & Kinicki, A., *Organizational Behavior* (8th ed. 2008).

<sup>11</sup> Thomas, A., *Incidents of sexual harassment at educational institutions in India: Preventive measures and grievance handling*, 2(3), *International Journal of Recent Advances in Multidisciplinary Research*, 0317-0322 (2015).

“Gender discrimination is frequently viewed and interpreted differently by men and women, further complicating the issue. Men, in comparison to women, tend to have restricted views of what constitutes a hostile work environment, and as a result, they may engage in acts that amount to sexual harassment without realising it.”<sup>12</sup> “In a similar vein, a meta-analytic review of 62 studies found that women, as opposed to men, perceive a broader range of issues as sexual harassment, including derogatory personal and impersonal attitudes, unwanted dating pressures, sexual propositions, physical sexual contact, physical non-sexual contact, and sexual coercion. Even though both genders agree that sexual offers and coercion are examples of sexual harassment.”<sup>13</sup>

### **Sexual Harassment and Organizational Initiatives**

Furthermore, several cases have been recorded where workers do not take sexual harassment regulations seriously. For example, “although many workers are aware of the existence of sexual harassment rules in their firms, many do not care to read the policy document. Many large firms in India, on the other hand, are making real attempts to raise awareness among their employees about the seriousness of sexual harassment.”<sup>14</sup>

## **2. DEFINITION, MEANING, CONCEPT AND TYPES OF SEXUAL HARASSMENT**

### **2.1 Definitions**

Following are the various definitions of Sexual Harassment

1. Sexual Harassment is described as “uninvited and unwelcome sexual verbal or physical activity, especially by a person in power toward a subordinate.”<sup>15</sup> by Merriam Webster.
2. The Australian Human Rights Commission defines sexual harassment as “an uninvited sexual advance, unwelcome request for sexual favours, or other unwelcome sexual

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<sup>12</sup> Schultz, V., *Reconceptualizing sexual harassment*, The Yale Law Journal, 107(6), 1683-1805, (1998).

<sup>13</sup> Rotundo, M., Nguyen, D., & Sackett, P. R., *A meta-analytic review of gender differences in perceptions of sexual harassment*, Journal of Applied Psychology, 914-922, (2001).

<sup>14</sup> Phadnis, S.& John, S., *Sexual harassment at workplace law gets tepid response*, The Times of India, from <https://timesofindia.indiatimes.com/business/india-business/sexual-harassment-at-work/articleshow/34450315.cms>, (last visited March 11, 2022).

<sup>15</sup> Definition of Sexual Harassment, <https://www.merriam-webster.com/dictionary/sexual+harassment> (last visited March 2, 2022).

behaviour that offends humiliates, or intimidates a person in circumstances where a reasonable person would expect such reaction.”<sup>16</sup>

3. The International Labor Organization addressed “sexual harassment as a prohibited form of sex discrimination”.<sup>17</sup>
4. According to Oxford English Dictionary Lexico, Sexual Harassment is defined as “Behavior characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation”.<sup>18</sup>
5. According to Cambridge Dictionary, Sexual Harassment is defined as “an unwanted or offensive sexual attention, suggestion or talk, esp. from an employer or other person in a higher position”.<sup>19</sup>

## **2.2. Meaning and Concept of Sexual Harassment**

Although the current administrative, legal and philosophical definitions of the term sexual harassment are accurate, it is clear that these definitions leave out the interpersonal aspect that characterises the idea. Indeed, the perpetrator's and victim's states of mind are critical factors in determining the nature of the crime.<sup>20</sup>

Sexual harassment is a specialized category of intrusive communication that infringes on the victim's right to privacy. Because the entire concept of sexual harassment revolves around the person's consent, it can also be described as an unaccepted act of physical contact, explicit or implicit promise, request for sexual preferences, screening pornography, or an act of physical, verbal, or nonverbal behaviour that embarrasses and threatens the health and security of a woman falls under the connotation of sexual harassment.

## **2.3. Types of Sexual Harassment**

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<sup>16</sup> Sexual Harassment in the Workplace- The Legal Definition of Sexual Harassment, Australian Human Rights Commission, <https://humanrights.gov.au/our-work/sexual-harassment-workplace-legal-definition-sexual-harassment> (last visited March 2, 2022).

<sup>17</sup> Labour Legislation Guidelines, <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/noframes/ch7.htm> (last visited March 2, 2022).

<sup>18</sup> Sexual Harassment I Definition of Sexual Harassment by Oxford Dictionary on Lexico.com also meaning of Sexual Harassment, LEXICO DICTIONARIES I ENGLISH, [https://www.lexico.com/definition/sexual\\_harassment](https://www.lexico.com/definition/sexual_harassment) (last visited March 2, 2022).

<sup>19</sup> Sexual Harassment I Cambridge English Dictionary <https://dictionary.cambridge.org/dictionary/english/sexual-harassment> (last visited March 2, 2022).

<sup>20</sup> Edmund Wall, The Definition of Sexual Harassment, 5 Public Affairs Quarterly 371, 371-385 (2012).

Sexual harassment is classified into three categories: visual, verbal, and physical.

**I. *Visual Sexual Harassment***- Any type of visual sexual harassment in which the harasser reveals his private parts to a victim or continuously stares at her disrespectfully in a manner that makes her feel uncomfortable, contemptuous, or insulting provides a delineated basis for sexual harassment. Sexual harassment includes being compelled to watch pornographic content or to look at any kind of sexually explicit photographs, emails, letters, or text.<sup>21</sup>

**II. *Verbal Sexual Harassment***- According to the definition, “Unwelcome sexual advances, requests for sexual favours, and other sexual physical harassment that explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment,”<sup>22</sup> Requests or threats for sexual favours, comments on someone's looks, cracking jokes or making gender prejudiced or sexually assaultive statements, or enlisting one's self in spreading tales about others' sex life are a few examples of verbal sexual harassment.

**III. *Physical Sexual Harassment***- It is defined as “an act by a male co-worker or supervisor that conveys sexually suggestive statements.” According to another definition provided by the International Labor Organization, “the physical actions with a sexual nature include: (i) joking or teasing with a sexual nature; (ii) continual invitation to dinner or date notwithstanding denial; (iii) purposeful distribution of rumour with a sexual nature; (iv) seeking or having sexual experience; (v) disseminating and showing a nude or photograph with explicit sexual content; (vi) requesting sexual intercourse; (vii) unwanted physical contact; (viii) forced sexual intercourse, and such same acts.”<sup>23</sup>

### **3: EVOLUTION AND DEVELOPMENT OF LAWS RELATED TO SEXUAL HARASSMENT IN INDIA**

India's dedication to women's protection has been evident since independence, as evidenced by provisions in the Constitution and other applicable legislation. The Indian Parliament has

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<sup>21</sup> Amukugo, Elizabeth Magano, ed. *Democracy and Education in India and Beyond: 25 A Critical Appraisal of Prevention of Sexual Harassment Act 56, 56-78* (2017).

<sup>22</sup> Sexual Harassment can be Verbal, TRALIAN (2018), <https://www.traliant.com/blog/2018/03/01/can-sexualharassment-be-verbal/> (last visited March 10, 2022).

<sup>23</sup> International Labor Organization, *Giving globalization a human face. Report III (Part 1B)*. International Labor Conference, 101th Session, Geneva, Para. 789 (2012).

passed a slew of legal provisions to protect women from sexual harassment. The various laws are as follows:

### ***I. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013***

There was no such explicit statute that addressed the offence of sexual harassment before the landmark decision in the case of ‘Vishaka and others v. the State of Rajasthan’.<sup>24</sup> The Apex Court issued some recommendations known as the Vishaka Guidelines as a result of this decision. The following rules provide a framework in every official and informal organisation to guarantee that employee gender equality is not jeopardised.<sup>25</sup>

However, in 2013, an act was established with the primary goal of explicitly identifying sexual harassment, its kinds, and the numerous actions that should be implemented by respective organisations to prevent the recurrence of such acts. Above all, the legislation establishes a redress process and specifies the penalties that will be imposed on the organisation if they fail to comply with the same.<sup>26</sup>

### ***II. The Criminal Law (Amendment) Act, 2013***

On April 2, 2013, another significant legislative provision relating to sexual harassment was introduced when the then-president signed an anti-rape measure into law.<sup>27</sup> The newly approved measures not only changed the definition of rape but also raised the severity of the sentence for rape and gang rape convictions. This Act also briefly discusses acid attacks, human trafficking, and oral sex, among other topics. Non-treatment of victims, as well as any ineffectiveness or misconduct on the part of public authorities throughout any stage of an inquiry, has been made criminal by up to six months in prison and a fine.<sup>28</sup>

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<sup>24</sup> Vishakha and Ors v. State of Rajasthan, (1997) 6 SCC 241.

<sup>25</sup> Subhash C Kundu & Jahanvi Bansal, A Critical Analysis of Sexual Harassment of Women in India: Laws, Issues and Preventive Measures, 2 Assemblage ABM Research 272, 176-281 (14 June 2018).

<sup>26</sup> Pavalli Kapila, Evolution of Indian Laws on Workplace Sexual Harassment, 6 International Journal of Humanities and Social Sciences Invention 46, 46-52 (Sept 2017).

<sup>27</sup> Wrendy Zeldin, India: Criminal Law Amendment Bill on Rape Adopted I Global Legal Monitor (2013), <https://www.loc.gov/law/foreign-news/article/india-criminal-law-amendment-bill-on-rape-adopted>. (Last visited March 6, 2022).

<sup>28</sup> Diva Rai, Offences Against Women and Provisions for it in the Indian Penal Code, IPLEADERS (2019), <https://blog.ipleaders.in/offences-against-women/> (last visited March 6, 2022).

### **III. *Indian Penal Code, 1860***

This act's chapter sixteen deals with offences against the human body, and it defines all acts that come under the category of Sexual Harassment. "If any person conducts any kind of obscene act in public or sings or recites any obscene song, ballad, or declarations or phrases in a public place or near any public place to the irritation of others. Then such a person shall be punished by imprisonment for a period of up to three months, or by a fine, or both, according to section 294."<sup>29</sup>

The following two provisions, Sections 375 and 376<sup>30</sup>, outlaw rape and recognise it as the most heinous crime punishable by imprisonment and fine if the prosecution can show the actus rea and mens rea beyond a reasonable doubt.<sup>31</sup> Section 503,<sup>32</sup> protects any sexual advances made in the form of threats or intimidation to physically harm a woman's property, body, or reputation, whereas section 499 of the same act protects women's dignity and modesty by criminalising the act of morphing pictures with the malafide intention of destroying her image in the eyes of reasonable people in the society.<sup>33</sup> Finally, section 509 of the IPC states that "any person who, with the intent to insult the modesty of a woman, says something or makes sounds or gestures or exhibits any object with the intention that the same be noticed and heard or in any way intrudes the privacy of a woman, shall be liable to an imprisonment which may extend to one year or a fine or both."<sup>34</sup>

### **IV. *Information Technology Act, 2000***

Social media has become an indispensable aspect of our lives as a result of technological advancements. According to a poll performed by the Central Women's Commission of India, social media sites such as Instagram, Facebook, and Snapchat account for 60% of all sexual harassment complaints.<sup>35</sup> To combat this, the legislation established the Information Technology Act, 2000, which includes section 67 which makes it illegal to phish indecent

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<sup>29</sup> Indian Penal Code, 1860, §294 (India).

<sup>30</sup> Indian Penal Code, 1860, §375, 376 (India).

<sup>31</sup> Madhu Balaaji S & S. Malaimangal, A Study on Sexual Harassment of Women in India, 7 International Journal of Current Advanced Research 9980, 9981-9985(2018).

<sup>32</sup> Indian Penal Code, 1860, §503 (India).

<sup>33</sup> Indian Penal Code, 1860, §499 (India).

<sup>34</sup> Indian Penal Code, 1860, §509 (India).

<sup>35</sup> Over 60 Percent cases at State Women's Penal on Social Media Harassment- The Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/over-60-cases-at-state-womens-panel-on-socialmedia-harassment/articleshow/67863140.cms?from=mdr> (last visited March 6, 2022).

content in any form of internet communication.<sup>36</sup> The term "cyberstalking" is defined in the following section, and under this section, police officers can arrest the culprit if he utilises electronic means to harass, intimidate, or threaten the victim.<sup>37</sup>

#### **4: EVALUATION OF LAWS RELATED TO SEXUAL HARASSMENT CONCERNING CASE LAWS**

In this chapter, court interpretations of the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013' are discussed. The main goal of this law is to raise awareness among the country's inhabitants and to give a solid platform for women to report occurrences of sexual harassment.<sup>38</sup>

##### **4.1 What constitutes Sexual Harassment?**

Sexual harassment's definition under the act includes situations where there is a power play or a quid pro quo, as well as extreme cases such as rape or assault. In the case of "Shanta Kumar v. Council of Scientific and Industrial Research (CSIR) & Ors, the Delhi High Court found that sexual harassment under the POSH Act requires physical behaviour with a sexual undertone."<sup>39</sup> In "K.P. Anil Rajagopal v. the State of Kerala, the court said that the conduct or behaviour must be related to sexual harassment, including charges of promise, threat, or an unpleasant or hostile work atmosphere against female workers. A solitary allegation of intemperate language against a female employee in a report does not constitute an offence of sexual harassment under the POSH Act, 2013".<sup>40</sup>

##### **4.2 What defines a Workplace?**

"The definition of workplace is inclusive and deliberately kept wide by the Parliament to ensure that any area where women may be subjected to sexual harassment is not left unattended or unprovoked, the Bombay High Court stated in the case of *Jaya Kodate v. Rashtrasant Tukdoji*

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<sup>36</sup> Information Technology Act, 2000, §67 (India).

<sup>37</sup> Information Technology Act, 2000, §72 (India).

<sup>38</sup> India's Law on Workplace Sexual Harassment: Recent Judicial Interpretation- Employment and Human Resource- India, <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/723340/india39s-lawon-workplace-sexual-harassment-recent-judicial-interpretations> (last visited March 11, 2022).

<sup>39</sup> Crime by Another Name: The casual acceptance of sexual harassment at the workplace must end, 48 Economic and Political Weekly 7, 7-9 (30 March 2013).

<sup>40</sup> K.P. Anil Rajagopal v. State of Kerala, (2018) 1 KLJ 106

Maharaj Nagpur University.”<sup>41</sup> In light of this decision, the term ‘workplace’ now applies to any location made available to an employee to do work, regardless of the job allocated to her. Before this decision, the term ‘workplace’ referred exclusively to the physical borders of a company.

#### **4.3 Filing a complaint with the Internal Committee**

Section 9 of the act covers sexual harassment complaints. In “Shital Prasad Sharma v. the State of Rajasthan, however, the court decided that an aggrieved woman can register a complaint with the IC without having to submit it in person.” In Sarita Verma v. New Delhi Municipal Corporation & Ors, the court held that “merely because the petitioner has an alternative option to bring the provided complaint before another body, it would not operate as a constitutional obstacle for the Court to decide on the subject and added that the results of IC should not be disregarded only based on vague and broad considerations.”<sup>42</sup>

#### **4.4 Constitution and powers of the Internal Complaints Committee**

The act's section 4 mandates the formation of an Internal Complaints Committee inside the company. “The external member need not necessarily have legal experience or awareness in the areas of sexual harassment against women, the Delhi High Court decided in Gaurav Jain v. Hindustan Latex Trust and Ors.”<sup>43</sup> In the case of “Ruchika Singh Chhabra v. Air France India and Anr, the court said that the nomination of an external member of the IC shall be made in strict accordance with the POSH Act and the provisions thereunder. As a result, investigation procedures performed by an IC that is not properly constituted under the law may be considered null and void.”<sup>44</sup>

Finally, in “Vidya Akhave v. Union of India, Department of Women & Children & Ors, the Bombay High Court held that where the inquiry has been conducted by the IC after giving adequate opportunity to all the parties and it has reached a conclusion, then merely because two views are possible, the court is not expected to re-appreciate the evidence and come to a different conclusion than the one which has been reached by the IC.”<sup>45</sup>

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<sup>41</sup> Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University, 2014 SCC Online Bom 814.

<sup>42</sup> Sarita Verma v. New Delhi Municipal Corporation & Ors, 2016 LLR 785 2.

<sup>43</sup> Gaurav Jain v. Hindustan Latex Trust and Ors, 2015 SCC OnLine Del 11026.

<sup>44</sup> Ruchika Singh Chhabra v. Air France India and Anr, 2018 SCC Online Del 9340.

<sup>45</sup> Vidya Akhave v. Union of India, Department of Women & Children & Ors, 2017 LLR 357.

#### **4.5 The Rights of the Employers**

Although the act's purpose is to safeguard employees and foster a hostile work environment, it also outlines the rights of the employer, which includes the right of the employer to remove the accused employee if he is found guilty of any such charge. The Patna High Court acknowledged the same privilege in the case of “Mohan Kumar Singh v. Chief Manager (HRD) Central Bank of India.”<sup>46</sup>

#### **4.6 Territorial Jurisdiction of the Courts**

“The court which shall have geographical jurisdiction to hear the complaint of sexual harassment should be the site where the conduct has happened, the Gauhati High Court ruled in Biplab Kumar Das v. IDBI Bank Limited and Others.”<sup>47</sup> Even after such a strict rule was enacted, sexual harassment continues to be a primary concern for every firm functioning across the country.

### **5: ISSUES AND LOOPHOLES IN THE PRESENTLY ENACTED LAWS**

#### **5.1 Issues concerning the Implementation of Presently Enacted Provisions of Sexual Harassment**

The main problem with these rules is that enforcing them is extremely difficult for law enforcement authorities. The underlying problem that employers confront is that the majority of complaints filed with them are falsely labelled as sexual harassment when they are truly general harassment. Employees are oblivious to the fundamental distinction between the two.

Another significant issue with these laws is that they are gender-specific; these laws exclusively protect women, even if the offender might be either a man or a woman. Providing preferential treatment to one based on sex demoralises the character of the opposing sex in our modern and changing society when men and women want equality and perceive themselves to be equal in every respect.<sup>48</sup> Another key problem for businesses and committee members is defining what constitutes a workplace. Although it is self-evident that your actual office location is your

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<sup>46</sup> Mohan Kumar Singh v. Chief Manager (HRD) Central Bank of India, 2017 SCC OnLine Pat 2483.

<sup>47</sup> Biplab Kumar Das v. IDBI Bank Limited and Others, 2017 LLR 1148.

<sup>48</sup> Krithi Singh, The Movement for Change: Implementation of Sexual Assault Laws in India, 39 India International Centre Quarterly 259, 259-269 (2013).

workplace, these distinctions are becoming increasingly blurred. Another difficulty that many businesses encounter is committee formation; one obstacle is obtaining a senior female employee to act as a preceding officer for each office. Another issue is that by legislation, each member of your group must be devoted to the cause of women. The meaning of this sentence is a bit unclear.

## **5.2 Loopholes in the current operational law of Sexual Harassment**

The essential flaws of the act are explored here:

- The most glaring flaw in the provisions of the 'Sexual Harassment at Workplace Act, 2013', is the act's refusal to recognise retrospective claims. The Act does not guide how relations should continue if a current employee is held responsible for prior wrongdoings committed by a woman who has no immediate ties to the present firm.
- The act relies on the subjective knowledge of the involved organisations to resolve sexual harassment concerns. Unambiguous steps to control such risks would only serve to reassure women that their rights are respected by the Indian legislature.
- On the one hand, this statute establishes a formal redressal committee in the organised sector but fails to mention the need for such a mechanism in the informal sector. Although a local compliance committee was eventually created, its operation has not been in the news since then, and the law also fails to enforce fines or penalties in the event of non-compliance.
- Another big disadvantage of this act is that it is based on gender. As a result, the balance between men's and women's rights and responsibilities is thrown off.

## **6: DISCUSSION AND CONCLUSION**

### **6.1 Suggestions**

Contrary to regulations, it has put women in a disadvantageous situation, affecting them not just physically but also psychologically, economically, socially, and emotionally. The following are some recommendations for improving the current situation for women in terms of sexual harassment.

- **Need for comprehensive legislation to fill the legislative lacuna**

The present rules relating to sexual harassment, as mentioned in the preceding chapter, are not without flaws and loopholes. It is extremely difficult for enforcement agents to carry out the terms of existing legislation. This necessitates the enactment and enforcement of a proper rule as soon as possible, one that not only protects women in both the organised and unorganised sectors but also matches the linguistic equipment of society and is intelligible to all working women. Furthermore, sexual harassment offences are now dealt with in various statutes, such as the POSH Act<sup>49</sup>, which deals with sexual harassment at work, the Indian Penal Code, which deals with provisions that provide punishment for rape, assault, and outraging the modesty of women, and the IT Act, 2000<sup>50</sup>, which criminalises phishing of obscene material and harassment through social media platforms. As a result, it is suggested that all offences against women be unified, and thorough legislation be established that identifies and punishes all crimes against women.

- **Need for the protection of unorganized working women**

Women in the unorganised sector are sexually harassed more than women in the organised sector, according to a poll performed by the Indus Scroll Organization.<sup>51</sup> The POSH Act<sup>52</sup> only tries to protect working women in the organised sector, leaving little place for working women in the unorganised sector.

- **The government should start a campaign to educate the working class.**

Even though Indian laws make sexual harassment illegal and punishable, the number of incidences of sexual harassment has been steadily growing since then. The lack of awareness among the working class is one of the main causes behind this. The central welfare board should take steps to educate women and strive to develop counselling facilities so that victims may receive free emotional care.

- **Strict Laws for the abuse of the Law**

In other circumstances, the perpetrator makes false charges against the victim to protect his interests in the guise of self-defence. This harms the victim's mental health and demoralises her

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<sup>49</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

<sup>50</sup> Information Technology Act, 2000.

<sup>51</sup> Dr Smitha Shile, The Safety of Women in the Unorganized Sector, INDUS SCROLLS (2019), <https://indusscrolls.com/how-safe-are-women-in-unorganised-sector/> (last visited March 8, 2022).

<sup>52</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

character to the point that she loses her morale, self-motivation, and proposes suicide. In such circumstances, strong regulations prescribing exemplary punishment and penalties for the violation of the law should be in place.

## **6.2 Conclusion**

Among all the crimes, sexual harassment is unquestionably the most widespread. "An unwelcome and unsolicited verbal or physical action of a sexual character, generally by a person in authority toward a subordinate," according to the definition. Extortion, stalking, compulsion, threats, unwelcome sexual conduct, assault, and intimidation are all examples of sexual harassment.

Sexual harassment has an emotional, physical, social, economic, and financial impact on the victim. To avoid this, the Indian government established and implemented a slew of legislation aimed at protecting women from these horrific crimes. Despite establishing laws, introducing programmes, policies, and a variety of activities aimed at the development of women, India remains one of the worst countries in terms of the amount of organised and unorganised crimes committed against women. Sexual harassment is a societal issue, and it is not the role of the government to combat it; instead, corporations must develop and execute measures to protect their employees, and we, as responsible Indian citizens, must do our part by raising awareness among the uninformed. Sexual harassment can only be eradicated if we all work together.