

LEGALFOXES LAW TIMES

Sexual Harassment

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INTRODUCTION

India is a land of diversity with different religion, cultures, customs etc. India is the only land where women are treated as Devi, Laxmi and so on. India is called the 'Land of unity in diversity' as it consists of varied culture, customs etc. But nowadays, Indians are affected by the western culture, not only culturally but morally and also ethically.

India is a country where men's and women are treated equally and women are getting opportunities to prove themselves. There are various areas of a society and profession where a woman can achieve great things that men won't be able to achieve, but women's always need to put some extra efforts as compared to men.

During these efforts, she needs to face many things, whether socially, morally, mentally, or physically, not only today but from years. As we have seen in the past few decades, new

initiatives were taken by various colleges and university for the upliftment of women in the fields of science, engineering, medicine, law etc.

These efforts show signs of improving gender diversity as student in the life sciences and in medical schools and different universities reaching gender parity and as different programs at some campuses are experiencing significant growth in women's enrolment. But these gains are at risk as women increasingly enter in different fields, they face biases and barriers that impede their participation and career advancement various field like science, engineering, medicine, law etc.¹

The government of India provide some special rights & provisions, for women's and constitution of India also provide some special rights for women's in fundamental rights under article (14,15,21) and directive principle of state policy. There are also certain NGO's that work for women's welfare & protection some of them are: SEWA, SNEHALAYA, AZAD FOUNDATION, CREA, SWANITI, MAKAM. As these Act not only interfere with their performance at work, but also affect their social and economic growing put them through emotional and physical suffering. In India, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted by the Ministry of Women and Child Development, in 2013.²

As in other male dominated fields, whether in academia or not, sexual harassment is one of the most pervasive of these barriers.

Sexual harassment can be defined as discrimination that includes gender harassment (verbal and nonverbal behaviours that convey enmity to objection of; or second- class status about members of one gender),unwanted sexual attention (verbally or physically unwelcome sexual advances, which can also include assault), sexual coercion (when favourable professional or educational treatment is conditioned on sexual activity). In the past 10 years, the cases of sexual harassment

¹<https://www.nap.edu/read/24994/chapter/3>

²<https://businesswindo.blogspot.com/>

in different fields has held steady, yet now more women in various fields (as student and faculty) are experiencing sexual harassment as they work.³

Women who had faced sexual harassment are coming forward and sharing their experience that include denigrating comments, demeaning jokes, repeated unwelcome sexual advances, demands for sexual favours and other offensive and discriminatory actions or languages.

Therefore, the objective of this paper is to serve as a ready reckoner to all the stakeholders and re-educate them on the law relating to sexual harassment. Further, the objective of this paper is to create more awareness on the issue and simultaneously equip employers in providing women a safe and secure working environment.⁴

The Vishaka Judgement⁵

In 1992, a woman named Bhanwari devi work as an employee with the rural development programme of the Government of Rajasthan, was brutally gang raped as she is working to limit the prevalent practice of child marriage. This incident revealed the threat that faced by working women on a day to day basis and highlighted the necessity for safeguards to be implemented in this regard. Championing the cause of working.⁶

women in the country, many women's rights activists and lawyers filed a public interest litigation in the Supreme Court under the ensign of Vishaka case. The Supreme Court for the first time, acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court placed assurance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of UN, which India has both sanctioned and signed. The Vishaka Guidelines issued as per judgment under Article 32 of the Constitution, until such time a legislative framework on the subject enacted, that the effect of law would have to be mandatorily followed by organizations, both in the private

³http://nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁴<https://www.scribd.com/document/440728871/Chapter-2-Sexu>

⁵Indira Jaising, Law Relating to Sexual Harassment at the Workplace (2014)

⁶<https://www.nap.edu/24994>

and government sector.⁷ According to the Vishaka judgment, 'Sexual Harassment' includes such unwanted sexually determined behaviour (whether directly or by implication) as:

- a. Physical contact and advances
- b. A demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing pornography;
- e. Any other unwanted physical, verbal (spoken) or nonverbal conduct of sexual nature.

Where any of these acts are committed in such condition in which the victim has a reasonable doubt in relation to the victim's employment or work (whether she is provided with payment or honorarium and voluntary service, whether in government, public or private enterprise), such conduct can be embarrassing and may constitute safety and health problem, it can amount to sexual harassment in the workplace. It is unfair, when the woman has reasonable grounds to believe that also her objection would disadvantage her in connection with her work or employment (regarding recruiting and promotion), or when it creates an unfriendly working environment. Adverse outcome might be seen if the victim does not take proper action against the conduct in question or raises any objection.⁸

⁷<https://www.lexology.com/library/detail.aspx?g=cb74f2ac-f7c5-44f8-b607-aea2f735cef4>

⁸http://nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

WHAT IS SEXUAL HARASSMENT

The Equal Employment Opportunity Commission has defined sexual harassment in its suffering as: unreasonable sexual advances, requests for sexual advances, request for sexual favours, and when other oral or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.⁹

Unwelcome Behaviour

Does not mean "involuntary". An aggrieved person may be conscious or agreeable to certain practices and actively participate in it Offensive and objectionable. Therefore, whenever the person is under it, sexual conduct is unwanted, Unpleasant. Whether the person really welcomed the request for a date, sex-oriented comment, or joke depends on everyone Situation.¹⁰

sexual harassment includes many things

- Actual or attempted rape or sexual assault.
- Unwanted pressure for sexual favours.
- Unintentional intentional touching, bending, cornering or pinching
- Unwanted sexual looks or gestures.
- Undesirable letters, telephone calls, messages, or materials of a sexual nature.
- Unwanted pressure for dates.

⁹<https://quizlet.com/85163016/sexual-harassment-study-guide-flash-cards/>

¹⁰Preventing Sexual Harassment (BNA Communications, Inc.) SDC IP .73 1992

- Unwanted sexual teasing, jokes, remarks, or questions.
- Attributing to an adult as a girl, doll, babe, honey or hunk.
- Whistling at someone.
- Cat calls.
- Sexual comments.
- Turning work discussions to sexual topics.
- Sexual innuendos or stories.
- Asking about sexual fantasies, preferences, or history.
- Personal questions about social or sexual life.
- Unwanted comments about a person's clothing, anatomy, or looks.
- Kissing sounds, howling, and smacking lips.
- About sexual comments
- The person's clothes, anatomy, or looks
- Neck massage
- Touching or rubbing yourself around another person.
- To stand or brush against a person.
- looking up and down someone (eyes of lift).
- Staring at someone.
- Fetish signs.
- Facial expressions, eye kills, throwing kisses, or licking lips.
- make by hand or through body movements.

VERBAL¹¹

- Attributing to an adult as a girl, doll, babe, or honey.
- Whistling at someone, cat calls.
- Making sexual comments about a person's body.
- Making sexual comments or innuendos.
- Turning work discussions to sexual topics.
- Telling sexual jokes or stories.
- Asking about sexual fantasies, preferences, or history.
- Personally, asking questions about social or sexual life.
- Making kissing sounds, howling, and smacking lips.
- Unwanted comments about a person's clothing or looks.
- Repeatedly asking from a person who is not interested.
- Gossiping or spreading about a person's personal sex life.

NON-VERBAL

- Looking up and down a person (through lift eyes).
- Staring at someone.
- Blocking a person's path.
- Following the person.
- Giving personal gifts.
- Displaying sexually suggestive visuals.

¹¹<https://www.un.org/womenwatch/osagi/pdf/whatishh.pdf>

- Make sexual urates with hands or through body movements.
- Creating facial expressions like throwing kisses blinking eyes or licking etc.

PHYSICAL

- Give a massage around the neck or shoulders.
- Touching the person's clothing, hair, or body.
- Hugging, kissing, patting, or stroking.
- Touching or rubbing yourself around another person.
- Standing close or brushing against another person.

TERMINOLOGY¹²

i. **SEXISM** is an attitude. It is a view of a person of a sex that he or she is superior to a person of the other sex. For example, a man thinks that women are very emotional. Or a woman thinks that men are chauvinists.

ii. **SEX DISCRIMINATION** is a behaviour. This happens when employment decisions are based on an employee sex or when an employee is treated differently due to his or her gender. For example, a female manager or director asks the male employees, in a co-ed workplace, to move the boxes of computer paper. Or, a male supervisor always asks the female employees, in a co-ed workplace to plan office parties.

iii. **SEXUAL HARASSMENT** is a behaviour. It is defined as unwelcome behaviour of a sexual nature. For example, when a man blows a whistle at a woman while she walks. Or a woman looks a man up and down when he walks towards her.

¹²<https://www.un.org/womenwatch/osagi/pdf/whatish.pdf>

iv. SUBTLE SEXUAL HARASSMENT is a behaviour but not a legal term. It is unwanted behaviour of a sexual nature that if allowed to continue may create a QUID PRO QUO and/or a Hostile Work Environment for the recipient. For example, unwelcome sexual comments, jokes, etc.

v. QUID PRO QUO HARASSMENT is when employment and/or employment decisions for an employee is based on that employees' acceptance or rejection of unwelcome sexual behaviour. For example, a manager or director fires an employee because that employee will not go out with him or her.

vi. HOSTILE WORK ENVIRONMENT is a work environment created by unwelcome sexual behaviour or behaviour directed at an employee because of that employee's sex that is offensive, hostile and/or intimidating and has an adverse effect on the ability of the employee to do his or her job. For **example**, widespread offensive sexual comments or jokes that continue however the recipient has indicated that those behaviours are undesirable sources.

CASES

1. **Mrs. Mary Roy Etc. vs State of Kerala & Ors (24 February)**¹³

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a woman's right activist and educator. After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance. Though the plea was rejected by the lower court, the Kerala High Court overruled the previous judgment. In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

2. **Lata Singh vs State of U.P. & Another on 7 July, 2006**¹⁴

Lata Singh was adult when she left her family home to join a marriage with a lower caste man. Her brothers, who were unhappy with the accord, therefore missing person report was filed, and alleged Lata had been found abducted. This resulted in the arrest of three people from her husband's family. In order to get the charges dropped, Lata Singh filed a petition resulted in the landmark judgment by the Supreme Court that allowed an adult woman the right to marry or live with someone of her choice. The court further ordered that the police initiate criminal action against people who commit violence against those who decide inter-religious or inter-caste marriages.

3. **Roxann Sharma vs Arun Sharma on 17 February, 2015**¹⁵

Roxann was involved in a bitter child custody battle with her estranged husband. A court in Goa granted her interim custody of their child, but Arun Sharma whisked their son away and refused to let Roxann meet the child. She filed a case against him, which led to the landmark judgment pronounced by the apex court regarding children caught in a legal battle between parents. The

¹³1986 AIR 1011, 1986 SCR (1) 371

¹⁴<https://indiankanoon.org/doc/1364215/>

¹⁵https://yourstory.com/2018/01/8-landmark-judgements-that-changed-the-course-for-women-in-india?utm_pageloadtype=scroll

Supreme Court ruled that when estranged parents are involved in a legal tussle over the custody of a child who is under the age of five years, the child custody will remain with the mother.

4. Tamil Nadu Vs Suhas Katti¹⁶

This case led to the first conviction under the Information Technology Act, 2000. The victim was being harassed by the accused, Suhas Katti, when she refused to marry him. He would send defamatory and obscene messages to her online in a Yahoo message group. To add to her agony, she began to receive phone calls from unknown people soliciting sex work. The victim filed a complaint in February 2004, and within seven months the accused was convicted. In an age of merciless trolls and other forms of online harassment, this judgment acts as a tool that woman can use to safeguard their dignity.

5. Laxmi vs Union of India & Ors on 10 April, 2015¹⁷

Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013. The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years.

¹⁶<http://www.legalserviceindia.com/lawforum/cyber-laws/17/state-of-tamil-nadu-vs-suhas-katti-cyber-law-case-in-india/2238/>

¹⁷<https://indiankanoon.org/doc/90443079/>

EXAMPLE

- **Physically blocking a person's movements; in other words – standing in their way**



- **Accidentally on purpose' brushing up against a person**



- **Staring or looking their body up and down**



- **Following them around or paying excessive attention**



- **Making insulting comments about someone's gender identity or sexual orientation or asking about someone's sexual orientation**



- **Telling lewd jokes or sharing stories about sexual experiences – even if this is not directed at you but done in your presence to cause you discomfort**



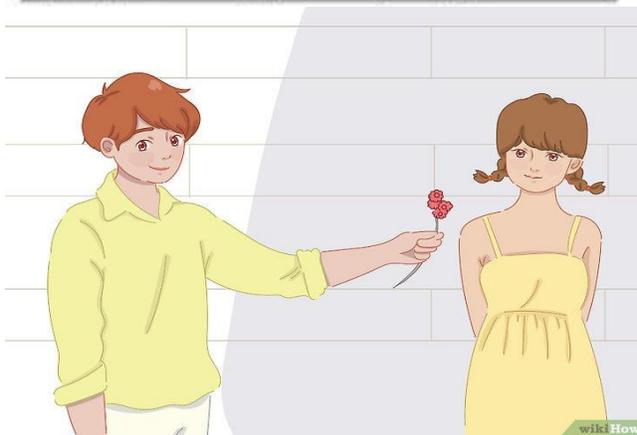
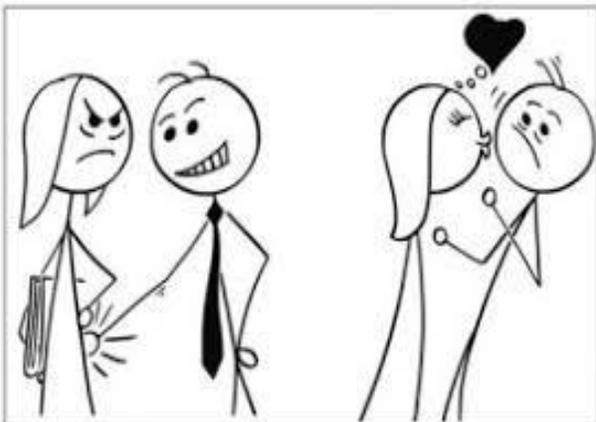
- **Sending unwanted suggestive or lewd emails, letters or other communications or sharing images of a sexual nature around the workplace or displaying posters, items or screensavers of a sexual nature**



- **Inappropriate and suggestive touching, kissing, rubbing or caressing of a person's body and/or clothing**



- **Repeatedly asking for dates despite being rebuffed or asking for sexual favours**



- **Making sexually offensive gestures, remarks or facial expressions**



This is just a small sample of behaviours that could be construed as sexual harassment at work, and there are others that fall under the banner of workplace sexual harassment. The bottom line is, if someone who you work with is exhibiting behaviour, verbal, physical or otherwise that makes you feel uncomfortable then you should take steps to deal with it as soon as possible.

WHAT IS A WORKPLACE? ¹⁸

A workplace is may be defined as “a place visited by the employee during the course of employment, including services such as transportation provided by the employer for undertaking a trip.” As per above definition, workplace include both the organised and un-organised sectors.

It also covers all workplaces either owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes: -

Government organizations, including Government company, corporations and cooperative societies;

- Private sector organisations, enterprises, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health care or financial activities, including production, supply, sale, distribution or service; -

Hospitals/Nursing Homes;

Sports Institutes/Facilities;

Places visited by the employee including transportation provided by employer;

- A dwelling place or house. The Act defines the Unorganised Sector as:
- Any enterprise owned by an individual or self-employed worker engaged in the production or sale of goods or providing services of any kind;
 - Any enterprises that employ less than 10 workers.

WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE? ¹⁹

“Sexual Harassment” includes one or more of the following unwanted actions or behaviours (whether directly or by bio plication) are as follows:

1. Physical contact or advances;

¹⁸<https://www.iitk.ac.in/wc/data/Handbook>

¹⁹<https://www.lawyersclubindia.com/articles/Internal-Complaint-Committee-Sexual-harassment-of-women->

2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography;
5. Any other unwanted physical, verbal or non-verbal conduct of a sexual nature

Some examples of behaviour that may specify underlying workplace sexual harassment and competency check:²⁰

1. Criticizing, insulting, blaming, reprimanding or publicly condemning an employee.
2. Eliminating from group activities or assignments without a valid reason.
3. Statements damaging a person's reputation or career.
4. Removing areas of responsibility, unjustifiably.
5. Inappropriately giving too little or too much work.
6. Constantly overruling authority without just cause.
7. Unjustifiably monitoring everything that is done.
8. Blaming a person continuously for no reason.
9. Repeatedly assigning an employee with him condemning and believing that is not part of his regular duties.
10. Insults or disgrace, repeated attempts to exclude or to separate a person.
11. Systematically with common workspaces subversion or means of work.
12. Humiliating a person in front of colleagues, engaging in smear campaigns.
13. Arbitrarily taking disciplinary action against an employee.

²⁰<https://www.quora.com/What-is-the-definition-of-sexual-harassment>

14. Withdrawing resources (time, budget and training) gives the person necessary success.

Some examples of workplace behaviour that not constitute sexual harassment:

1. Following-up on work absences.
2. Requiring performance to job standards.
3. The normal exercise of management rights.
4. Work-related stress e.g. meeting deadlines or quality standards.
5. Conditions of works.
6. Creative feedback about the work and not the person.

Examples of Non-Sexual Harassment in the Workplace²¹

- Passing negative comments about an employee's personal religious beliefs, or trying to convert them to a certain religious ideology
- Using racist slang, phrases, or nicknames
- Making remarks about a person skin colour or other ethnic traits
- Demonstrating images, or posters that may be offensive to a special group
- Making offensive gestures
- Making offensive reference to a person's mental or physical disability ➤ Sharing inappropriate emails, videos, images, letters, or notes etc.
- Aggressively talking about negative racial, ethnic, or religious stereotypes

²¹<https://www.thebalancecareers.com/examples-of-sexual-and-non-sexual-harassment-2060884>

- Making derogatory age-related comments
- Wearing clothing that could be offensive to a particular ethnic group

Non-sexual harassment isn't limited to these examples. Non-sexual harassment includes any comment, action, or type of behaviour that include insulting, intimidating, threatening or discriminatory in nature that upsets the workplace environment.

KEY PROVISIONS OF THE POSH ACT, 2012²²

I. Applicability and scope

Applicable Jurisdiction: The POSH Act applicable to the ‘whole of India’.²³

Aggrieved Woman: As per the POSH Act, an ‘afflicted woman’ in relation to a workplace, is a woman of any age, whether she works or not, who have been subjected to sexual harassment of any kind.²⁴ Given definition does not require a woman to be an employee, even a one client / clients who are sexually harassed at the workplace can claim protection under the POSH Act.

The POSH Act further states that a woman should not be subjected to sexual harassment at their workplace.²⁵ Accordingly, it may be noted that in order to claim a women protection under the POSH Act, the incident should have occurred at the place of ‘workplace’. The POSH Act only protects women as it is not a gender-neutral law and only protects women. Therefore, the safeguards under the POSH Act do not apply to ‘male victims’.

Covered bodies: The POSH Act applies to both the organized and unorganized sectors in India. This, among other things, applies to government bodies, private and public sector organizations, non-governmental organizations, out reaching commercial organizations, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.²⁶

Punishment and compensation

The POSH Act determines the following penalties can be imposed for accusing an employee of sexual harassment by an employee:

- Punishment was authorized under the service rules of the organization;

²²http://nishithdesai.com/fileadmin/user_upload/pdfs/Research

²³Section 1 of the POSH Act

²⁴Section 2(a) of the Prevention of Workplace Sexual Harassment Act

²⁵Section 3 of the Prevention of Workplace Sexual Harassment Act

²⁶Section 2(o) of the Prevention of Workplace Sexual Harassment Act

- if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, slander, prohibition on promotion, prohibition of increments, terminating the appellant from service, going through a counselling session, or being taken out community service; and
- Deduction of compensation payable to the aggrieved woman from the wages of the appellant.²⁷

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- Decrease in career opportunities due to sexual harassment incidents;
- medical expenses incurred by the victim for physical/ mental treatment;
- income and status of the supposed perpetrator; and
- feasibility of such payment in lump sum or in instalments.

In the event that the defendant fails to pay the aforesaid amount, I.C. May proceed with the order for recovery of the amount as arrears of land revenue to the concerned District Officer.²⁸

Frivolous complaints

In order to ensure that the protections envisaged under the POSH Act are not misused, provisions for action against “incorrect or malicious” is included in the law against complainants. As per the POSH Act, if the IC/LC concludes that the allegation made by the complainant is false or malicious or the complaint made knowing it to be untrue or misleading information. It has been provided with inquiry, disciplinary information because it is false or fake or misleading

²⁷Section 13 of the Prevention of Workplace Sexual Harassment Act

²⁸Section 15 of the Prevention of Workplace Sexual Harassment Act

information. Actions can be taken against such complainant as per service rules of the organization. Where on the organization does not have service rules, this law provides for disciplinary action in writing, forgiveness, warning, reprimand, censor, stop promotion, stop increment, terminating the defendant from service, going through counselling sessions or performing community service can be taken. The POSH Act further clarifies that inability to file or provide a complaint is mere sufficient evidence does not mean that the complaint is false or malicious.

Confidentiality

Recognising the sensitivity attached to matters regarding harassment, the POSH Act attaches significant importance to making sure that the complaint and connected information are kept confidential. The POSH Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005.²⁹ The POSH Act further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent, witnesses, any information referring to conciliation and inquiry proceedings, recommendations of the IC/LC and also the action taken to the general public, press and media in any manner. That said, the posh Act allows dissemination of data pertaining to the justice that has been secured to any victim of molestation, without disclosing the name, address, identity or the other particulars which could end in the identification of the complainant or the witnesses³⁰. Disclosure of the justice secured couldn't only deter other individuals from engaging in acts of molestation, but also instil within the minds of employees and public, that the employer is serious about providing a secure work environment and harbours intolerance for any kind of molestation at the workplace.³¹

Breach of the duty to take care of confidentiality by an individual entrusted with the duty to handle or handle the complaint or conduct the inquiry, or make recommendations or take actions

²⁹<https://www.scribd.com/document/408551019/Sexual-Harrasment-at-Workplace-Act>

³⁰Section 16 of the Prevention of Workplace Sexual Harassment Act

³¹Shivangi Prasad and Attreyi Mukherjee, Handbook on the law of Sexual Harassment at Workplace 179 (2015)

under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000 (approx. US\$70).³²

Consequences of non-compliance

If an employer fails to constitute an IC or doesn't adjust to the necessities laid down under the POSH Act, a monetary penalty of up to INR 50,000 (approx. US\$ 700) is imposed. Repeat of the identical the punishment for the offense is doubled and/ or the registration of the institution is cancelled or someone is revoked.³³ Statutory Business License although it's not clear which commercial license is being cited. It's also necessary to notice that each one offence under POSH Act are non-cognizable.³⁴

³²Section 17 of the Prevention of Workplace Sexual Harassment Act and Rule 12 of the Prevention of Sexual Harassment Rules

³³Section 26 of the Prevention of Workplace Sexual Harassment Act

³⁴Section 27 of the Prevention of Workplace Sexual Harassment Act

INDIAN PENAL CODE ,1860³⁵

Criminal Law (Amendment) Law 2013 penalises and punishes the perpetrators of harassment under the subsequent sections of the Indian legal code (IPC)

Section 294: Obscene acts and songs—whenever, to the annoyance of others:

➤ does any obscene act in any public place

➤ sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which can touch three months, or with fine, or with both³⁶

Section 354: Any man commits to assault or use of criminal force to woman with intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment or fined or both.

A) Sexual harassment –

1. physical contact and advances involving unwelcome and explicit sexual overtures

2. demand or request for sexual favours

3. showing pornography against the desire of a lady

4. making sexually coloured remarks Punishment: imprisonment which can reach three years or with fine or both.

B) Using assault or criminal force to a lady with intent to disrobe her. Punishment: imprisonment for not but three years which can extend up to seven years and fine

C) Voyeurism (Any man watching or capturing the image of a lady engaging in a very private act. Punishment: (On first conviction) Imprisonment for not but one year which can reach three

³⁵Prof. S.N. Misra, 21st Edition 2018

³⁶<https://indiankanoon.org/doc/1198799/>

years and fine. (repeated offenders) Imprisonment not but three years, this could reach seven years and fine.³⁷

D) Stalking (Any man following a lady and attempting to contact, or foster personal interaction despite a transparent indication of disinterest by her or monitors the employment by a lady of internet, email or the other kind of electronic communication) Punishment: Imprisonment which can extend up to 3 years. (repeated offenders) imprisonment may reach five years and fine.

Section 509: uttering any word or making any gesture intended to insult the modesty of a woman

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Punishment: imprisonment for three years and fine

The IPC provisions which can be utilized in the case of harassment at the workplace are given within the following table. so as to invoke the operation of penal provisions, it's required that the costs must be proved beyond reasonable doubts and must have all ingredients of the offence.

SECTION	PROVISION
• Section 107 to 109	Abetment
• Section 120A and 120B	Criminal conspiracy
• Section 166A	Public servant disobeying direction under law
• Section 292 to 294	Obscenity
• Section 306	Abetment of suicide
• Section 319 to 331	Relating to hurt and grievous hurt
• Section 326A and 326B	Causing grievous hurt by use of acid, etc.
• Section 339 to 348	Wrongful restraint and wrongful confinement
• Section 354	Assault or use of criminal force to woman with intent to outrage her modesty

³⁷<https://wcd.nic.in/sites/default/files/Sexual%20Harassment%2C%20English-Jagori.pdf>

³⁸<https://wcd.nic.in/sites/default/files/Sexual>

- **Section 354A** Sexual harassment
- **Section 354B** Assault or use of criminal force with intent to disrobe
- **Section 354C** Voyeurism
- **Section 354D** Stalking
- **Section 375 and related provisions** Rape
- **Section 376C** Sexual intercourse by a person in authority
- **Section 415 to 417** Cheating
- **Section 499 to 500** Defamation
- **Section 503,506 and 507** Criminal intimidation
- **Section 508** Act caused by inducing the person to believe that he will be rendered the object of divine displeasure.
- **Section 509** Word, gesture or act intended to insult the modesty of a woman
- **Section 511** Attempt to commit an offence.³⁹

THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013

“No woman shall be subjected to harassment at any workplace, whether public or private, whether the aggrieved woman is employed there or not. “

Defines sexual harassment as per (S. 3 (2) of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013

1. Implied or explicit

- a. promises of preferential treatment in employment;

³⁹<https://quizlet.com/in/260362957/339-348-wrongful-restraint-and-confinement-flash-cards/>

- b. threat of preferential treatment in employment;
- c. threat about her present or future employment status
- 2. Interference with her work or creating an intimidating or offensive or hostile work environment for her;
- 3. Humiliating treatment likely to affect her health or safety.

Workplace defined as per S. 2(o) of this Act:

- 1. A Government department/institution;
- 2. A private sector organization/institution;
- 3. Hospitals/Nursing homes;
- 4. Sports complexes;
- 5. Places visited by an employee during the course of the utilization including transportation provided by the employer

Complaints Committee: As per this law, every employer employing 10 or more persons is remitted to constitute an interior Complaints Committee to handle complaints of harassment at the workplace (S. 4)⁴⁰, Failure to constitute this committee or act per the recommendations of the committee shall result be punished with a fine which can be Rs. 50,000/- (1st time), double the fine or cancellation of license to hold out business the 2nd time. (S. 26)⁴¹

The employer is additionally under an obligation to initiate action under the Indian penal code against the perpetrator and to produce assistance to the aggrieved woman if she chooses to initiate action under the Indian penal code herself (S. 19).⁴²

If an internal complaints committee has not been constituted, the woman can file a complaint with the Local Complaints Committee set up by the District Office (S. 5)⁴³

⁴⁰Section 4 of the sexual harassment of women at workplace act, 2013

⁴¹Section 26 of the sexual harassment of women at workplace act, 2013

⁴²Section 19 of the sexual harassment of women at workplace act, 2013

⁴³Section 5 of the sexual harassment of women at workplace act, 2013

To register a Complaint under this Act: A woman can make a report of sexual harassment within 3 months of the incident with the internal/local complaints committee (S.9).⁴⁴ If the woman is unable to make the complaint herself, owing to mental/physical incapacity or death, her legal heir may also make the complaint.

Transfer During the Inquiry:

1. The aggrieved woman or the respondent may be transferred;
2. she may be granted leave up to 3 months;
3. other reliefs may also be prescribed by the Government.

Results of the Inquiry: The internal/local complaints committee may recommend after its inquiry that the employer within 60 days (S. 13)⁴⁵ take action against the respondent for sexual harassment as a misconduct as per the service rules or government prescriptions; or deduct adequate sums from the respondent's salary/wages;

The aggrieved woman can also appeal from this inquiry in the court/tribunal as designated by the government.

This appeal should be made within 90 days from the recommendations.

When you/others face sexual harassment:

In a public place or on the street: Take help from people around you (friends/strangers) and draw attention towards the harasser and the crime. Lodge a written complaint at the nearest police station. It is the duty of the police and your right to demand immediate action against the harasser.

In school/college/university/ any workplace: Approach the faculty Complaint Committee or the other statutory body to register a complaint. In absence of any such statutory body, approach the Women's Development Cell or share with teachers/ professors/ principal or the other representative of faculty authority. For socio-legal counselling and casework: you'll be able to

⁴⁴Section 9 of the sexual harassment of women at workplace act, 2013

⁴⁵Section 13 of the sexual harassment of women at workplace act, 2013

also take help of other organisations/groups. Legally, lodging a first Information Report (FIR) with the closest station house under the acceptable section of India Penal Code¹ is suggested joined of the primary steps.⁴⁶ The police are to record a FIR in cases of sexual harassment/ rape and any refusal by a lawman shall end in him imprisonment which can extend from 6 months to 2 years together with fine (S. 166A, I.P.C.)⁴⁷

⁴⁶<https://wcd.nic.in/sites/default/files/Sexual%20Harassment%2C%20English-Jagori.pdf>

⁴⁷Section 166 of the Indian Penal Code

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT

On 14th November, 2012, a brand-new law was enacted, the Protection of youngsters from Sexual Offences (POCSO) Act, which brought in major changes within the law associated with sexual violence, as far as children below 18 years are concerned.

The aims and objectives of this Act were:

- To secure a child's right to safety, security and protection from regulatory offense.
- to safeguard children from inducement or coercion to sexuality
- to stop exploitative use of youngsters in prostitution and generation of pornographic material.
- to supply a comprehensive legislation to safeguard the interest of a toddler at every stage
- reporting, recording of evidence, investigation and trial of offences.
- to supply for establishment of special courts for sensitive and speedy trial

It made the law gender neutral and brought within its purview regulatory offense of both girls and boys below the age of 18 years. It also widened the definition of sexual violence beyond the standard peno-vaginal penetration to incorporate crimes which failed to amount to rape under the IPC. It also prescribed stringent punishment and plenty of procedural safety measures to safeguard the kid during investigation and trial.

But this statute received hardly any media attention and also the police continued to use the present IPC sections in most cases of statutory offense on children. Things began to vary only by January, 2013, when, after the gruesome gang rape and murder of a 23-year-old para-medical student in Delhi, there have been widespread protests and international attention was drawn to the problem of sexual violence against women in India and also the question whether we've adequate and stringent laws in situ to handle the problem became the purpose of debate within the media. In response, the govt founded a committee headed by late Justice J.S. Verma to create recommendations for formulating a brand-new law to cater to sexual violence. As per these recommendations a draft Bill was submitted to the Parliament, and without much delay, on 3rd April, 2013, the Amended law came into effect which changed the relevant sections within the Indian penal code (IPC), the Criminal Procedure Code (Cr.P.C.) and also the Indian Evidence

Act (IEA). With these changes the definition of sexual violence and the procedural aspects to produce safety to women and youngsters are more or less, similar.⁴⁸

IMPORTANT PROVISIONS UNDER THE POCSO ACT, 2012

Victim under the Act: Any person, both male and female, below the age of 18 years.

Accused under the Act: Any person, both male and female, adult or child.

Note: As far because the offence of sexual violence against children is anxious, the law is gender neutral. Also note that the POCSO Act doesn't use the word "rape" and uses instead the word "sexual assault". The definition is incredibly wide and includes a spread of offences including non-penetrative regulatory offense and also oral and buggery and insertion of objects into the vagina, anus or other body orifices. If grave harm is caused to

the victim or if the offence is committed by someone in authority, the offence is termed as "aggravated" offence.

During the Trial

The POCSO Act provides for fixing of special child friendly courts to conduct the trial.

Many states have also founded special courts for all cases of statutory offence concerning women and kids.

All trials concerning statutory offence are going to be conducted in private.

The victim shall be allowed to possess a support person inside the court during the examination and cross examination.

⁴⁸<https://pib.gov.in/newsite/mbErel.aspx?relid=114973>

Questions regarding the past sexual history of the victim or child, or the other humiliating questions which cause the victim trauma shall not be asked during cross examination.

If the kid I below 7 years, there can't be direct cross examination. The lawyer would need to give the questions in writing to the judge and therefore the judge shall explain the identical to the kid⁴⁹

Offence	Punishment
Penetrative Sexual Assault (Section 3)	Imprisonment (7 yrs. min. life imprisonment max) +Fine (Section 4)
Aggravated Sexual Assault (Section 5)	Imprisonment (10 yrs. min. life imprisonment max) +Fine (Section 6)
Sexual Assault: with sexual intent touching the private parts of a child (Section 7)	Imprisonment (5 yrs. min. 7 yrs. max) +Fine (Section 10)
Aggravated Sexual Assault: Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/ jail/hospital/school, etc. (Section 9)	Imprisonment (7 yrs. min. life imprisonment max) +Fine (Section 4)
Sexual Harassment with sexual intent (Section 11)	3 yrs. imprisonment +Fine (Section 12)
Use of Child for pornographic purposes (Section 13)	First Conviction: Imprisonment up to 5 yrs. + fine; Second or subsequent conviction: 7 yrs. imprisonment. {Section 14 (1)}
Penetrative Sexual assault by directly participating in pornographic acts {Section 14 (2)}	Imprisonment (10 yrs. min life imprisonment max) + Fine {Section 14 (2)}
Aggravated penetrative Sexual assault by directly participating in pornographic acts {Section 14 (3)}	Rigorous imprisonment for life +Fine {Section 14 (3)}
Sexual assault by directly participating in	Imprisonment (6 yrs. Min. 8 yrs. Max.) + Fine

⁴⁹the POCSO Act, 2012

pornographic acts {Section 14 (4)}	{Section 14 (4)}
Aggravated penetrative Sexual assault by directly participating in pornographic acts {Section 14 (5)}	Imprisonment (8 yrs. Min. 10 yrs. Max.) + Fine {Section 14 (5)}
Storage of pornographic material by directly involving child for commercial purposes. (Section 15)	Imprisonment or Fine or Both (Min. yrs. not mentioned, 10 yrs. Max (Section 15)

All offences under the POCSO Act are considered as grave offences. Hence, they are non-bailable and cognisable and the trial are to be conducted by the Court of Sessions.⁵⁰

⁵⁰<https://www.quora.com/What-is-the-Pocso-Act>

THE INFORMATION TECHNOLOGY ACT, 2000

This Act provides legal acknowledgement for transactions applicable by means of electronic data interchange and other means of transmission, commonly known as —electronic commerce, which provide alternatives for employment by replacing paper-based methods of communication and of knowledge, and facilitate filing of electronic documents with government agencies and also modify the Indian penal code, the Indian Evidence Act, 1872, the Banker’s Books Evidence Act, 1891 and the banking concern of India Act, 1934 and for matters connected therefore.⁵¹

There is certain provision in Information Technology Act, 2000 which deal with offences related to sexual harassment, there are listed below:

Section 66A.⁵² Punishment for sending unwanted messages through communication service, etc.—Any person sends offensive messages, through electronic media like computer resource or communication device, —

- (a) any information that is extremely offensive or has threatening character; or
- (b) any information which he knows to be false, except for the aim of doing anger, danger, insult, injury, criminal intimidation, inconvenience, or ill will, by making use of such computer resource or a communication device;
- (c) any piece of email or piece of email message for the aim of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which can reach three years and with fine.

Explanation.— For the needs of this section, terms “electronic mail” and “electronic message” means a message or information created or transmitted or received through electronic media or

⁵¹<https://indiacode.nic.in/handle/123456789/1999>

⁵²Section 66A, The Information Technology Act, 2000

communication device including documents in text, image, audio, video and any other electronic record, which can be transmitted through messages.⁵³

Section 66E.⁵⁴ Punishment for violation of privacy.– if someone deliberately or consciously takes or snare, publishes or spread the images that are personal, of somebody without his or her consent, under such situation he/she has violated the privacy of that person, the punishment is prescribed with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

Explanation. For the needs of this section–

(a) transmit means to electronically send a visible image with the intent that or not it's viewed by someone or persons;

(b) capture, with relevancy a picture, means to videotape, photograph, film or record by any means;

(c) private area means the naked or undergarment clad genitals, public area, buttocks or female breast:

(d) publishes means reproduction within the printed or electronic form and making it available for public

(e) under circumstances violating privacy means circumstances during which someone can have an affordable expectation that

(i) he or she could disrobe in privacy, without caring that a picture of his private area was being captured; or

(ii) any a part of his or her private area wouldn't be visible to the general public, no matter whether that person is at exceedingly public or private place⁵⁵

⁵³<https://internetdemocracy.in/laws/the-information-technology-amendment-act-2008/section-66a/>

⁵⁴Section 66A, The Information Technology Act, 2000

⁵⁵<https://indiankanoon.org/doc/112223967/>

Section 67. Punishment for publishing or spreading disgusting material in electronic form.⁵⁶ Whoever discloses or spreads or causes to be published or transmitted through electronic form, any material which is lascivious as its effect is likely to tend to deprave and corrupt persons who are likely, having relation with significant incidents to read, see or hear the matter contained in it, shall be punished on first conviction with imprisonment for a term which may extend three years with fine which can reach five lakh rupees and if it repeats second time then the person is convicted with imprisonment of either description for a term which extends to five years also with fine which can reach to ten lakh rupees.

Section 67A. Punishment for publishing or spreading of fabric containing sexually emphatic act,⁵⁷ etc., in electronic form.– if someone discloses or spreads or causes to be published or transmitted in electronic form any material which contains sexually blunt act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which can reach ten lakh rupees and within the event of second or subsequent conviction with imprisonment of either description for a term which can reach seven years and also with fine which can reach ten lakh rupees.

Section 67B. Punishment for publishing or transmitting of fabric depicting children in sexually explicit act,⁵⁸ etc., in electronic form. Whoever,

- (a) publishes or spreads or causes to be published material in any electronic form which states that children engaged in sexually blunt act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in an exceedingly manner which will offend an affordable adult on the pc resource; or
- (d) facilitates abusing children online, or

⁵⁶Section 67, The Information Technology Act, 2000

⁵⁷Section 67A, The Information Technology Act, 2000

⁵⁸Section 67B, The Information Technology Act, 2000

(e) records in any electronic form own sexually blunt act with children, shall be punished on first conviction with imprisonment of either description for a term which can reach five years and with fine which can reach ten lakh rupees and within the event of second or subsequent conviction with imprisonment of either description for a term which can reach seven years and also with fine which can reach ten lakh rupees: Provided that provisions of section 67, section 67A and this section cannot reach any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form⁵⁹

(i) the general publication of which is proved to be justified as being for the public good on the bottom that such book, pamphlet, paper, writing, drawing, painting representation or figure is that the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for real heritage or religious purposes.

Explanation—For the needs of this section, —children means someone who has not completed the age of 18 year⁶⁰

⁵⁹<https://internetdemocracy.in/laws/the-information-technology-amendment-act-2008/section-67-and-67a/>

⁶⁰<https://lawgic.info/67b-punishment-for-publishing-or-transmitting-of-material-depicting-children-in->

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Industrial Employment (Standing Orders) Act, 1946 (“Standing Orders Act”) could be a central enactment which, inter alia, requires an employer to define and publish uniform conditions of employment within the variety of standing orders. As per the statute, the standing orders should contain terms of employment including, hours of labour, wage rates, shift working, attendance and late coming, provision for leaves and holidays and termination or suspension/dismissal of employees. At the primary instance, the Standing Orders Act is applicable to ‘industrial establishments employing a minimum of 100 workmen.’⁶¹ The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and within the event that an employer has not framed and licensed its own standing orders, the provisions of the Model Standing Orders shall be applicable.

The Model Standing Orders prescribed under the commercial Employment (Standing Orders) Central Rules,

1996 (“Standing Orders Rules”) prescribe a listing of acts constituting ‘misconduct’ and specifically includes harassment. The Model Standing Orders not only defines ‘sexual harassment’ in line with the definition under the Vishaka Judgment, but also envisages the need to line up a complaints committee for redressal of grievances regarding workplace harassment. it's interesting to notice that ‘sexual harassment’ is not limited to women under the Standing Orders Rules.⁶²

⁶¹Certain State Governments, such as the Governments of Maharashtra and Karnataka, have enhanced the scope of the statute and made it applicable to establishments employing 50 or more employees. Further, in Maharashtra, the Bombay Shops and Establishments Act, 1948 specifically extends the applicability of the Standing Orders Act to all shops and commercial establishments.

⁶²<https://www.coursehero.com/file/p6vopd3/At-the-first-instance-the-Standing-Orders-Act-is-applicable-to-industrial/>

CONSTITUTION⁶³

Rights Guaranteed under the Constitution of India: Part III of our Constitution of India guarantees certain rights for the protection of rights of Women, are as follows:

Art. 14: - Right to equality

Art. 15: - Discrimination on ground of race, caste, sex etc.

Art. 16: - Equality of Opportunity

Art. 19: - Right to Freedom

Art. 21: - Right to life & Liberty

Art. 23: - Prohibition of traffic in human beings & forced labour.

Art. 25: - Freedom of conscience & free profession, practise & propagation of religion.

Art. 39: - Certain principles to be followed by State: -

- (a) Men and Women equally have the right to an adequate means of livelihood.
- (b) Equal pay for equal work for both for men & women
- (c) Health & strength of workers men and women & tender age of children are not abused & citizens are not forced by eco. Necessity.

Art. 39A: - Equal justice to free legal aid

Art. 42: - Provisions for just & humane condition of work & maternity reliefs.

Art. 51: - (A) Fundamental duties –

- (e) to promote harmony ... to practices derogatory to the dignity of women.

⁶³Dr. J.N. Pandey, 56th Edition 2019S

CONCLUSION

In India sexual harassment is the recently emerged social evil that are often faced by women in different area's whether it is home, place of work, or public women are being judged and harassed everywhere.

Some women even not know that they are the victim of sexual harassment. Therefore, the awareness among women are necessary about such offences, so that they can take necessary steps and can also help other who are being victimised.

As the first step was taken when the judgement came on Vishaka case, this judgement gave confidence and hope to others women to come forward and raise their voice against such offences. As this offence is as much serious like other offences.

Sexual harassment not only effect women mentally but also morally and socially.

Nowadays, the rate of such offences is increasing rapidly in India. As women are getting opportunity to study and to prove themselves. The major other cause for sexual harassment is higher educational profile of women who are being betrayed and offered sexual advances by the bosses of an organisation on lieu of job need to be addressed very strictly. It is observed that the cases of sexual harassment at workplace in India are increasing day by day.

Therefore, there is need to provide such a mechanism that could better halt the situation and can reduce the number of cases.

Therefore, the motive behind this paper is to bring awareness among peoples to change their mentality and treat women with respect and dignity. And to bring awareness among such women that don't knew about sexual harassment.