

## SEXUAL HARASSMENT AT WORKPLACE

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*“The meaning and content of the fundamental rights Guaranteed in the Constitution of India are of sufficient Amplitudes to encompass all facets of gender equality....”*

J. S. Verma J., in Vishaka v. State of Rajasthan

Women have a unique position in every society whether developed, developing or underdeveloped. She plays a very important role in every family, society or nation. In spite of her contribution in the life of every individual human being, she still belongs to a class or group of society which is in disadvantaged position on account of several social barriers and impediments. She has been the victim of tyranny at the hands of men who dominate the society. The position of Indian woman is no better compared to their counterparts in other parts of the world. On one hand she is held in high esteem by one and all worshipped, considered as the embodiment of tolerance and virtue. But on the other hand she has been the victim of untold miseries, hardships and atrocities caused and perpetuated by the male dominated society. The women have been a victim irrespective of her economic background. The rich and poor alike are the victims of social barriers and disadvantages of varying kinds. A report of the United Nations organizations points out that women constitute half the world population, perform nearly two-thirds of work hours, receive one-tenth of the world's income and own less than one-hundred percent of world's property.

In India, women have always been discriminated against and have suffered and are suffering discrimination in silence in the civilized as well as the primitive society. They have been made the victims of all inequalities, indignities, inequality and discrimination, from time immemorial. This history is responsible for including certain general as well as specific provisions for upliftment of women. With regard to the constitution contains many provisions which go a long way in securing gender justice. The rights guaranteed to the women are on par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions.

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The preamble to the Indian Constitution contains various goals including the equality of status and opportunity to all the citizens. This particular goal has been incorporated to give equal rights to the women and men in terms of the status as well as opportunity.

A safe workplace is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women's dignity violate the principle of equality of rights.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as 'natural' male behavior or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19(1)(g) of the Constitution of India "*to practice any profession or to carry out any occupation, trade or business*"; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioral patterns, which create gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large.

Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal Reputation. Across the globe today, workplace sexual harassment is increasingly understood as a violation of women's rights and a form of violence against women. Indeed, the social construct of male privileges in society continues to be used to justify violence

against women in the private and public sphere. In essence, sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations. In a society where violence against women, both subtle and direct, is borne out of the patriarchal values, women are forced to conform to traditional gender roles. These patriarchal values and attitudes of both women and men pose the greatest challenge in resolution and prevention of sexual harassment. Workplace sexual harassment, like other forms of violence, is not harmless. It involves serious health, human, economic and social cost, which manifests themselves in the overall development indices of a nation.

The Directive Principles of State Policy contained in part IV of the constitution incorporate many directives to the state to improve the status of women and their protection.

Article 39 (a) directs the state to improve the status of men and women, equally have the right to an adequate means of livelihood.

Article 39 (d) directs the state to secure equal pay for equal work for both men and women. Article 39 (e) specifically directs the state not to abuse the health and strength of workers, men and women.

Article 42 incorporates a very important a very important provision for the benefit. It directs the state to make provisions for securing just and humane conditions of work and for maternity relief. Apart from these specific provisions all the other provisions of the constitution are equally applicable to the men and women. This clearly establishes the intention of the framers of the constitution to improve the social, economic, educational and political status of the women so that they can be treated with men on equal terms.

In 1992, a rural level change agent, Bhanwari Devi, was engaged by the state of Rajasthan as a Sathin work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a one-year old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. That omission came at great cost Bhanwari was subsequently gang raped by those very men.

The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check

sexually offensive behavior in the workplace. Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as a violation of women's fundamental right to equality and that workplaces/establishments/institutions be made accountable and responsible to uphold these rights.

In a landmark judgment, *Vishaka v. State of Rajasthan* (1997), the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- A definition of sexual harassment
- Shifting accountability from individuals to institution
- Prioritizing prevention
- Provision of an innovative redress mechanism

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life. It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a third party person/NGO expert on the issue, to prevent any undue pressure on the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors. Vishaka established that international standards/law could serve to expand the

scope of India's Constitutional guarantees and fill in the gaps wherever they exist. India's innovative history in tackling workplace sexual harassment beginning with the Vishaka Guidelines and subsequent legislation has given critical visibility to the issue. Workplaces must now own their responsibility within this context and ensure that women can work in safe and secure spaces.

Having raised the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

- Prohibition
- Prevention
- Redress

Keeping in view the guidelines laid down by the Supreme Court in Vishakha's Case. In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements. It is important to note that the Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse of both civil and criminal proceedings.

Sexual Harassment includes anyone or more of the following unwelcome acts or behavior (whether directly or by implication), namely:

- i. Physical contact or advances;
- ii. A demand or request for sexual favours;
- iii. Making sexually coloured remarks;
- iv. Showing pornography;
- v. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal Right of women. Not only does it impact her, it has a direct bearing on the workplace

productivity as well as the development of the society. Below is a list of select examples of such negative impacts:

- Decreased work performance
- Increased absenteeism, loss of pay
- Loss of promotional opportunities
- Being objectified
- Becoming publicly sexualized
- Defamation
- Depression
- Anxiety, panic attack
- Shame, guilt, self-blame
- Fatigue, loss of motivation

Some examples of behavior that constitute sexual harassment at the workplace:

- Making sexually suggestive remarks or innuendos.
- Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
- Offensive comments or jokes.
- Inappropriate questions, suggestions or remarks about a person's sex life.
- Displaying sexist or other offensive pictures, posters, Mms, Sms, Whatsapp, or E-mails.
- Intimidation, threats, blackmail around sexual favours.
- Threats, intimidation or retaliation against an employee who speaks up about unwelcome behavior with sexual overtones.
- Unwelcome social invitations, with sexual overtones commonly understood as flirting.
- Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.

Generally workplace sexual harassment refers to two common forms of Inappropriate behavior:

- Quid Pro Quo (literally 'this for that')
  - Implied or explicit promise of preferential/detrimental treatment in employment
  - Implied or express threat about her present or future employment status
- Hostile Work Environment
  - Creating a hostile, intimidating or an offensive work environment
  - Humiliating treatment likely to affect her health or safety.

Shalini is a lawyer who works as a researcher at an NGO in Delhi since 2013. Dr. Bhargav is the director of the organization and has always advocated for the cause of human rights. During an official field visit to Shimla for 2 days, Dr. Bhargav finds an opportunity to be alone with Shalini and makes a physical advance. Despite her protests, he forces himself on her while giving lurid and sexually explicit details of his relationships, both past and present, with women. When she chastises him and threatens to make his behavior public, he threatens to destroy her career.

Srishti is a Captain with the Indian Army. She has refused an offer made by a Senior Officer for a relationship. Srishti has kept quiet about this experience, but thanks to the rumour-mongering by the Senior Officer, she has acquired a reputation of being a woman of 'easy virtue'. Now she is being subjected to repeated advances by three of her senior officer colleagues. When she turns around and protests, she is singled out for additional physical training.