

## PREVENTION OF SEXUAL HARASSMENT AND LEGAL FRAMEWORK IN INDIA

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**Abstract:** Work with dignity is the inherent and basic human right of all human beings. Several international conventions and constitutional provisions ensure that every work must be free from discrimination and violence. The principles of non-discrimination on the basis of sex and equal opportunity are basic rights for sustainable development and social justice. Women have been discriminating and exploiting physically or mentally either at home or at working place. She has to be denied of equal opportunity and undergone of torture, mental agony and stress in all times. Sexual harassment is one of the most underreported or unreported offence. The object of the paper is to create awareness among the rights of women at working place as described under the international instruments, constitutional provisions prohibiting the discrimination and providing equal opportunity of women in employment. To discuss the salient features of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and various forms of sexual harassment and grievance mechanism for handling cases of sexual harassment.

**Key words:** Women, Work, Sexual harassment

**Introduction:** Right to decent work is the core principle to live with dignity for all women and men. In spite of the guarantee of the Constitutional provisions for the elimination of discrimination on the ground of sex and to promote equal opportunity in access of work and public office. But in practice discrimination in various forms at work place is prevailing<sup>1</sup>. Sexual harassment is one of the common treatment have to face by the female worker or employee in the hands of male colleague, supervisor or employer at work place because of vulnerability, unsupported, lack of representation and insecurity of her position. The following is the brief data of cases registered under sexual harassment including sexual harassment at workplace<sup>2</sup>.

Year	2014	2015	2016
No of cases registered under Sec 509 of IPC	57	119	142

- data as per the National Crimes Records Bureau (NCRB)

Year	2016	2017	2018	2019 (January)
No of complaints of sexual harassment registered with NCW	539	570	965	29

\*data from National Commission for Women

Likewise the Ministry of Women and Child Development, Government of India has developed an online complaint management system known as Sexual Harassment electronic-Box (SHe-Box) for registering complaints of sexual harassment at workplace by women working in government and private sector. A total 423 complaints have been registered on the She-Box portal. The above three sources of data is indicating that there is an increase of sexual harassment cases day by day.

**Meaning of Sexual Harassment:** The legal expression of Sexual harassment denotes that, the object of the term is eliminate the discrimination on ground of sex and to end all type of harassments agiasnt women in the workplace. The meaning is widening continuously in legislation and court judgments. According to the United Stated Equal Employment Opportunity Commission (EEOC) defines sexual harassment<sup>3</sup> as:

“Unwelcome sexual moves or request for sexual favours either in form of verbal or physical conduct of a sexual nature constitutes sexual harassment when surrender to or refusal of this conduct directly or indirectly affects an individual's employment, unfairly interferes in individual's routine work or creates an threatening, unfriendly or offensive work environment.”

International Labour Organization (ILO) thesaurus refers Sexual harassment is unwelcome sexual moves or oral or physical behaviour of a sexual nature which has effect of unreasonably interfering in individual's daily work performance or creating an threatening, unfriendly, insulting or offensive working environment<sup>4</sup>. The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 describes sexual harassment to include any one or more of the following unwelcome acts or conduct (whether directly or by implication) namely:

- i. physical touch and moves
- ii. a request or demand for sexual favours
- iii. making sexually coloured comments
- iv. showing pornography
- v. any other unintended physical, verbal or non-verbal behaviour of sexual nature

### Sexual harassment includes

The following acts may inclusive in nature and not exhaustive.

Rape or attempt rape or sexual assault	Unwanted force for sexual favours	Intentional touching, leaning over, cornering or pinching against female staff
Sexual looks or gestures against female employee	Unwanted phone calls, letters, material of a sexual nature	Creating pressure for dates by male staff
Sexual teasing, jokes, comments on female employee	Referring to a female employee as a doll, honey, babe or girl	Whistling towards female staff
Cat calls	Giving personal gifts	Turning work discussions to sexual areas
Sexual stories	Putting personal questions about social or sexual life	Sexual comments about dress, structure or looks
Creating kissing sounds and smacking lips	Telling lies or spreading rumours about personal sex life	Neck massage
Touching the dress, hair or body of the employee	Hanging around a person	Hugging, kissing, hitting or stroking the female staff
brushing up or standing close to a person	Touching or rubbing oneself sexually around another person	Starting at someone
Sexually indicative signals	Facial expressions, throwing kisses	Making sexual gestures with hands or through body movements

Source: What is Sexual harassment, <https://www.un.org/womenwatch>

Sexual harassment<sup>5</sup> is legally recognized into two types:

- **Quid pro Quo**
- **Hostile Environment**

#### Quid Pro Quo sexual harassment

‘Something for something’ under this type of sexual harassment employer, supervisor or male colleague looking for sexual favours or making sexual advances towards female employee in exchange for benefits at work. For example if there is threat of economic loss, dismissal, demotion, creating difficult work condition, granting of service benefits, offering promotion etc., may constitute sexual harassment.

#### Hostile Environment

Hostile work environment<sup>6</sup> take place when uninvited sexual behaviour unduly interferes with an individual's routine job or creates an unfriendly, threatening or odious work environment even though the harassment may not physically shown that, the person may not cause economic loss or a promotion.

The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 recognizes these types of sexual harassment and describes the following circumstances may amount to sexual harassment at the workplace:

- If there is a promise for favour treatment towards female employee
- If there is a threat of unfavourable treatment in her employment
- If there is a threat about her present or future employment position
- Interference with her work or creating a threatening or unfriendly work environment for her
- Humiliating treatment that affect her health or safety

### **Sexual Harassment and Legal framework**

#### **I. International Legal framework**

The following International conventions, declarations and regional treaties recognized sexual harassment is a kind of discrimination and violence against women<sup>7</sup>. The state parties also to draft the civil, penal and other administrative sanctions as well as preventive strategies to eliminate violence against women. These consensuses provide the decent work environment and equal opportunity of women in access of work and public employment.

- i. The Convention on Elimination of All Forms of Discriminations against Women (CEDAW) 1979
- ii. The Declaration on the Elimination of Violence against Women, (DEVAW) 1993.
- iii. The Vienna Declaration and Programme of Action (VDPA)

- iv. The Universal Declaration of Human Rights (UDHR)
- v. Beijing Platform for Action
- vi. The Discrimination (Employment and Occupation) ILO Convention of 1958
- vii. The ILO's Indigenous and Tribal People Convention
- viii. The European Rules of Gender Equality
- ix. The Protocol of African Charter on Human and People's Rights on the Rights of Women in Africa.
- x. The Inter American Convention on Prevention, Punishment and Eradication of Violence against Women.

## **II. National Legal framework- Constitutional provisions**

The following articles of the Constitution guaranteed the equal opportunity and eliminate all types of discrimination on ground of sex.

Article 14: assures the equality before law and equal protection of law

Article 15: Prohibits discrimination on basis of religion, caste, sex or place of birth.

Article 19 (1) (g): Every citizen shall have the right to practice any profession or to carry on any occupation, trade or business.

Article 21: protected the right to life and personal liberty

In India, the *Vishaka* Guidelines framed by the Hon'ble Supreme Court paved the way for the enactment of Sexual harassment law. The Court held that sexual harassment of women in the workplace violates the basic universal rights of gender equality, discrimination on the basis sex, right to live with dignity, and the right to carry any occupation, trade or profession.

Due to increasing the reported cases of sexual harassment and violence against women the Government of India passed the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013. The main object of the SH Act was to protect the women against sexual harassment and provide mechanism for preventing and registering complaints of sexual harassment. The section 28 of the Act stated that the provisions shall be in addition to and not an exception to any other law for the time being in force.

No court shall take cognizance of any offense under this Act, or any of its rules, unless a complaint is made by the aggrieved woman, or any other person authorized by the Internal Complaint Committee (ICC) and the Local Complaint Committee (LCC). Only Judicial Magistrate of First Class has jurisdiction to try the offences under this Act. Every offense under this Act is non-cognizable.

### **Preventive measures of sexual harassment**

The following duties are obligatory on the part of the employer or the appropriate government by the Act to prevent the sexual harassment of women at workplace.

- Provide the safe and decent work environment at the working place
- Display the details the of grievance committee and procedure
- Display the penal sanctions of sexual harassment
- To organize workshops and awareness programmes on the provisions of the Act at regular interval
- Treating sexual harassment as misconduct on the part of the employee
- Framing their own rules on sexual harassment by the organizations/institutions
- Raise awareness among the employees relating to the rules and policy on sexual harassment
- Provide training to both male and female staff to prevent the sexual harassment

### **Grievance mechanism to prevent sexual harassment at workplace**

Aggrieved women under this act includes the all the women working or visiting workplace in the capacity of regular, temporary, ad-hoc or daily wage, women engaged directly or through an agent, co-worker, contract worker, probationer, trainee, apprentice and also women working under dwelling place or house.

### **Complaints committees**

The SH Act provides two kinds of complaints mechanism for registering and settlement of sexual harassment.

- i. Internal Complaints Committee (ICC)
- ii. Local Complaints Committee (LCC)

All Complaints Committees must have 50 per cent of representation from women. It is an obligation of the employer to constitute Internal Complaints Committee at the

organization/institutions level. Local Complaints Committee will constitute by the district officer at every district for the women who are working in the unorganized sector or small establishment.

In last, to prevent the sexual harassment of women at work place and create decent, safe and secure work environment there was a need for a movement like #Me Too.

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<sup>4</sup> Supra note 1

<sup>5</sup> Supra note 3 & 1

<sup>6</sup> Ibid 5

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