

## SEXUAL HARASSMENT AT WORKPLACE: A COMPARATIVE STUDY

DR.SAURABH CHANDRA<sup>1\*</sup>, DR.MEENAKSHI KAUL<sup>2</sup>, MS.SAUMYA TRIPATHI<sup>3</sup>

<sup>1</sup>Assistant Professor, Symbiosis Law School (SLS), Noida,  
Symbiosis International (Deemed University)(SIU), Pune, India  
saurabhchandranls@gmail.com

<sup>2</sup>Assistant Professor, Symbiosis Law School (SLS), Noida,  
Symbiosis International (Deemed University) (SIU), Pune, India  
kaulmeenakshi77@gmail.com

<sup>3</sup>LL.M. Student, Symbiosis Law School(SLS), Noida,  
Symbiosis International (Deemed University) (SIU), Pune, India  
saumyatpathi16112007@gmail.com

### Abstract

*This research paper explores sexual harassment of women in the workplace as well as other unfavorable workplace behaviors that occur in India and USA. The legal definition of sexual harassment is very broad, and it is a significant type of harassment against women throughout India and USA. Whether it occurs in developed, developing, or underdeveloped nations, it is a global issue. The emphasis placed on both men and women is more harmful and detrimental. Although the law is meant to serve as a protector, it doesn't appear to have succeeded in offering women the crucial protection they require.*

*Notwithstanding the fact that India has made significant strides in combating workplace sexual harassment. Since the Vishaka case in 1997, both the courts and the government have recognized that sexual harassment in the workplace is a serious violation of a woman's rights. As a result, the Protection of Women Against Sexual Harassment Bill could not be introduced into Parliament until 2010, highlighting the need for more concerted and prompt action in this area. In contrast, the issue was identified much earlier in the United States of America, where a robust statute has been crafted to address this threat. Although the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013 is a step in the right direction and India's laws against sexual harassment have advanced significantly, there is always a need for improvement.*

*The author's aim is to provide a thorough analysis of the laws in India and USA. It describes the criminological theories relevant to the Sexual Harassment in the Workplace and the scope of legislation which includes some of the peculiarities of the issue and comes to the conclusion that much more clarity & specificity is needed to prevent a crusade for improvements.*

**Keywords:** Sexual Harassment, Workplace, India, USA, Women, Gender Equality, Women's Rights.

### 1. INTRODUCTION

Slavery and the Industrial Revolution both contributed to the development of a culture that tolerates sexual harassment in the workplace. The majority of victims of sexual harassment at work are women. It fosters an environment at work where people of many castes and creeds can interact. The negative impacts of human interaction, lead to sexual harassment and other forms of discrimination. Due to rapid industrialization, women now hold important positions in the workforce. In the past, the male members worked outside the home while the female members handled household duties. Due to the presence of men in the armed services during a war, women were given the opportunity to labour outside the home. Few were still employed after the war in peacetime, and the men treated them less favorably as coworkers as a result. The women were exploited by them. Women's working conditions were poor, and it was difficult for them to obtain higher salaries because they were treated as rivals to have the opportunity for improvement and to join unions. Because of the conditions that the males had created, the women had little choice but to comply with their requests for sexual advances (Quid Pro quo).



However, the definitions given by India and the United States of America for sexual harassment in the workplace are as follows:

**INDIA:** The General Recommendation 23 relating to Art. 11 of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) states that sexual harassment includes any unwanted physical, verbal, or non-verbal conduct that is of a sexual nature, including

- (a) bodily interactions and advances;
- (b) an appeal or demand for sexual favors;
- (c) sexually explicit comments;
- (d) display of pornography; and
- (e) any other unwelcome conduct of a sexual nature.

The Supreme Court of India's landmark ruling in **Vishaka V. State of Rajasthan** included the criteria previously given and found that sexual harassment constitutes a breach of the rights to gender equality and to life and liberty as well as other fundamental rights. However, this definition is incorporated in section 2(n) of **Sexual Harassment at the workplace, 2013**.

**USA:** For the purpose of defining and enforcing Title VII, the Equal Employment Opportunity Commission (EEOC) established a set of recommendations in 1980. (in 1984 it was expanded to include educational institutions).

The EEOC defines sexual harassment as:

Unwanted sexual advances, requests for sexual favours, or other verbal or physical acts of a sexual nature when:

1. Submission to such conduct was made, either explicitly or implicitly, a term or condition of an individual's employment;
2. Submission to such conduct by an individual was used as the basis for employment decisions affecting such an individual; or
3. Such conduct has the intention or effect of unreasonably interfering with an individual's right to privacy

"Quid pro quo" is Latin for "something for something," and it refers to types 1 and 2. In essence, they are "sexual bribery," which is the promise of rewards, and "sexual compulsion."

The majority of cases fall under Type 3, also referred to as a "hostile work environment." This form is more ambiguous and subjective.

## **2. Sexual Harassment at Workplace: Relation with Victimization Theories**

The victims' involvement in the system of criminal justice is a rather organic phenomenon; historically, the victims were the center of the system, as was especially evident before the nineteenth century. However, the notion of victimology emerged in the 1980s and the 1990s, as opposed to the thirty years prior, when it had little application in criminology.

Therefore, the concept of sexual harassment in workplaces is related to the following victimology theories in the following context which are as follows:

### **a. Radical Theory**

Radical theory of criminology is divided into two i.e. left realist criminologists and feminist theory. So, here feminist theory is related to the topic of sexual harassment in the workplace. As on this theory, Chesney-Lind & Daly (1986) says that radical feminism has significantly advanced the study of female victimology. According to Radical Victimology, current representations of victimology that focus on the State instead of the victim serve a conservative agenda for crime control and have given the State more influence over criminal procedures. In addition to examining society's inclination for totally innocent victims and the system's restricted capacity to exact revenge through victim assistance programmes, radical victimology can also be used to analyze social attitudes to crime and crime victims. As there are few crimes in society that are mainly suffered by women one of the crimes is sexual harassment in the workplace. In addition to establishing that systemic injustices shape and mould victimhood, radical feminists also reinterpret the offender-victim relationship. The perpetrators are innocent bystander victims who are taken advantage of by strong state agents, such as the Criminal Justice system. Radical feminist theoretical research, both quantitative and qualitative, has contributed to the growth of sexual harassment. This is

demonstrated in popular culture by the feminist #metoo movement, which was founded by social activist Tarana Burke to combat sexual harassment and assault.

#### b. Critical Theory

A more modern branch of victimology called critical victimology is concerned with bigger societal and social issues connected to criminal victimization. It is a product of the work of Mawby and Walkate (1994). As victimologists in this subject are concerned with how context and social structure related to victimization. It also entails researching those who are disregarded by the justice system or by society at large. Critical victimology links societal social groupings and victimization rates in an effort to highlight how some social groups—like women and the poor—are structurally more vulnerable to crime.

By highlighting the ways that race, gender, class, and other identities impact social perceptions of victimization, critical victimology attempts to dismantle victim blaming by combining the idea of the idealized victim with intersectionality. Critical victimologists, for instance, would acknowledge that the movement against violence has risen the resources available to women who have experienced sexual and intimate partner violence and that women who really are Indigenous, Transgender, or Homeless might not have equivalent access to those tools and could handle unequally within victim support or the system of criminal justice. In a similar vein, it should be remembered that it is not just for the women who are living in homes or crime taking place anywhere but the place where the women are working it should also be a safe place for the women to live in.

However, Victimologist is concerned about Sexual harassment since it is widespread and linked to strain physical and mental illnesses. The situations that Sexual Harassment produces are unfair, threatening, hostile, abusive, and insulting; they undermine victims' confidence and sense of security and obstruct their ability to perform and achieve their goals.

### 3. Contrasting features of the framework in India and USA

#### 3.1 Legal Framework of Sexual Harassment at Workplace in India

India has never had any explicit legal restrictions on the subject of sexual harassment. Sometime around 1992, a saathin woman (Bhanwari) from Rajasthan was sexually harassed and then raped for fulfilling an official duty that required her to forbid upper caste community members from getting married too young. At Rajasthan's State High Court, Bhanwari was denied justice. Dissatisfied with this ruling, certain organizations going by the name of "Vishaka" petitioned the Supreme Court on the grounds of public interest litigation and demanded that all working-class women be given legal protection (Justice Verma Committee, 2013). In its ruling on the Vishaka case in 1997, the Supreme Court recognized the absence of specific domestic legal provisions safeguarding working-class women and took into account the fundamental rights of citizens guaranteed by Articles 14, 15, 19, and 21 of the Constitution of India 1950.

In India, the Vishaka Guidelines on Sexual Harassment in the Workplace, established by the Supreme Court in 1997, and the Indian Penal Code's Sections 354 and 509 provided legal heft prior to this. However, experts claim that less than five years after the prevention of workplace sexual harassment (POWSH) Act was passed, awareness is only starting to increase. Moreover, in the US system, class-action lawsuits are available to victims earlier than that in India. The class-action suit machinery accessible to sufferers in the US, however, differs fundamentally from that in other countries.

However, the need for proper legislation for sexual harassment was there because the Vishaka guidelines were not able to fulfil its purpose. As a result of the aforementioned guidelines, women who had experienced or were experiencing sexual harassment began speaking out through women's organizations or human rights organizations, as in the case of **Sutapa Roy v. Seagull Bookstores Ltd.** and other cases that were also brought before courts on the basis of sexual harassment at work. However, neither they claimed wrongdoing nor the punishment were thought to be comparable by the offenders.

These cases provide obvious examples. For instance, on Behalf of **Workman V. State of Maharashtra (2005)**, the culprit told the court that his termination from his job was excessive in



comparison to the claimed wrongdoing. In *Mediha Kotwal Lele & Ors vs. U.O.I. & Ors* (2012), the Supreme Court noted the flaws on the part of various businesses in following the stated Guidelines. However, the Supreme Court's options were limited because it was outside of their purview to enact laws or carry out the death penalty in the absence of supporting municipal legislation. However, after the Delhi gang rape case, the Sexual Harassment of Women (Prevention, Prohibition, and Redressal) Act was passed.

Due to POWSH legislation in India, "sexual harassment" now includes what "eve-teasing" formerly did. Sexual harassment is, in essence, the uttering of sexually suggestive statements or/and any other unwanted physical, verbal, or nonverbal action of a sexual character. "Sexual abuse is a different type of violence. The struggle against sexual harassment in India today requires collective representation, just like in any labour movement in history.

### 3.2 Legal Framework of Sexual Harassment at Workplace in the USA

Sex discrimination in the workplace is prohibited under Title VII of the Civil Rights Act of 1964, including in hiring, firing, promotions, and working conditions. It was changed in 1972 to expand the authority of the equal employment opportunity commission to include both small private companies and public employers. The first accounts of sexual harassment were case studies and journalistic reports, but *Farley's sexual Shakedown* and *Mackinnon's sexual harassment* of working women were the first large-scale systematic analyses of the problem. The author, an attorney, was in favour of raising awareness of the problem and taking legal action to stop this evil.

By specifically outlawing "quid pro quoll harassment" and "hostile work environment harassment" in the Civil Rights Act, a number of following lawsuits and regulations ultimately resulted in the legally acknowledged equality of job prospects for women. Sexual harassment is now a prohibited form of sexism under Title VII of the Civil Rights Act. The US Supreme Court has ruled that sexual harassment is prohibited under Title VII of the Civil Rights Act of 1964, which outlaw's employment discrimination based on gender (as well as race, colour, ethnicity, national origin, and religion). Because of this, employers are subject to liability for unlawful harassment.

The first category sexual harassment lawsuit to be brought in the US was *Lois E. Jenson v. Eveleth Taconite Co.* on behalf of Lois Jenson and some other female miners at the EVTAC mine in Minnesota, it was filed in 1988. In India, by contrast, workplace law would not exist independently until 2013. Giving testimony about the realities of harassment is quite uncomfortable. Credibility and any written or electronic evidence are crucial in sexual harassment claims since they frequently entail several sorts of testimony. The workplace has changed forever for the complainant. Women most frequently make the decision to quit the company, where their representation at top levels was as low as 14% in 2015.

Western nations, according to Murthy (specialist on press freedom, gender, and media and a part of the Network of Women in Media, India (NWMI)), take the economic consequences quite seriously. While Indian corporations are unwilling to spend even on these procedures, they are willing to pay significant damages. Western businesses are really serious about putting the systems in place, she says. In their *HBR piece*, *Grossman and Rhode* state that "safety in numbers is frequently what motivates women to come forward. And statistics frequently drive businesses to compromise and implement preventive measures. But it all starts with a complaint: even if the employee is certain that notifying management of the occurrence will have no effect, she should nonetheless do so (in the organization).

As per the Data from the Ministry of Women and Child Development shows that from 595 cases in 2018 to 795 cases in 2019, a 33.6% increase in the number of workplace sexual harassment complaints reported in Indian top companies' analysis.

"Sexual harassment claims had significantly decreased in 2020 and 2021 as a consequence of work-from-home arrangements, but they have now started to increase once again as a result of the creation of offices. According to Vishal Kedia, POSH expert and founder of Comply karo Services, "the greater cases are owing to the partial relaxation of lockdowns compared to last year.



Data from the EEOC (Equal Employment Opportunity Commission) shows that from 542 cases in 2018 to 620 cases in 2019, a 14.4% increase in the number of workplace sexual harassment complaints reported in USA top companies' analysis.

However, the data clearly shows that there is a growth rate in both countries in sexual harassment at workplace cases but there is a difference in the percentage. In India, the growth rate is high i.e. 33.6% and in USA it is 14.4% so having less percentage than in USA, we should take the suggestion from their laws and regulations.

The United States of America and India have both ratified the UDHR, ICCPR, Torture Convention and ICESCR treaties and declarations regarding workplace sexual harassment. In addition to the other unique treaties that the countries have each signed.

#### 4. Conclusion

Sexual harassment violates a woman's right to bodily integrity and freedom of movement and is a personal attack on her mind and body. According to **Justice Arijit Pasayat**, "While a murderer ruins the victim's bodily form, a rapist degrades and defiles the soul of a vulnerable female." The constitution of India, which is a supreme instrument, establishes the basic principles of Indian law. The constitution is the source of all other particular laws. Numerous international treaties, including CEDAW, which focused on the subject of safety and protection for signatories, should be implemented in this direction but until 2013, no particular legislation addressed the threat of sexual harassment of women at work. Sections 509 and 354 of the Indian Penal Code, 1860 were used to deal with it. The Vishakha recommendations, which served as a prelude to the new Act, were released in 1997 in the case of *Vishakha V. State of Rajasthan & Others*. Then with the object of protection, prevention and redressal of the sexual harassment act, 2013 came. After the Vishaka Guidelines, it took 16 years before the issue was covered by formal legislation due to this many women have suffered and were not able to get justice.

After reviewing the Act's provisions in detail, one can find gaps in the current statute. However, any unwanted action, gesture, statement, or other behaviour that offends a woman's modesty at work is sexual harassment. What needs to be understood, though, is the difference between welcome and unpleasant. The "offender" is not guilty of a crime if the act is not unwanted. An act may be justified by the perpetrator by claiming that the victim provoked them with their clothes, attitudes, or other actions, even though this may not be true. In a similar vein, the definition uses the ambiguous term "physical contact." There are various gaps in the laws that the harasser can easily use to his advantage. Clearly, more extensive measures and legislation are required to safeguard individuals who might become victims as well as to give a way of justice to those who have already suffered. Moreover, in India sexual harassment is gender-based nevertheless it should be gender-neutral for the betterment of society.

However, in USA since the 1970s, sexual harassment at work has been viewed as a criminal by American labour law. Title VII of the Civil Rights Act of 1964 in the United States prohibits sexual harassment at work. Individuals are shielded from sex-based discrimination under this statute. It makes it unlawful for employers to hire, terminate, or modify any terms of employment, etc. based only on sex. According to American law, both the harasser and the harassed party may be of any sex. Harassment is any generalized antagonism against sex. Due to the **Meritor Savings Bank v. Vinson case**, there are two categories of sexual harassment recognized by U.S. law: "quid pro quo" and "hostile work environment" harassment.

The Act gives the impression that it was not well written because there are many loopholes. Companies train both men and women about the laws, but only from there, they find the loopholes and then commit the offence in the manner described below. As, the provisions could have been more geared toward the female victim, such as the legislation for conciliation and punitive measures for false or malicious complaints in US legislation. The study reveals that men are more inclined to place the responsibility on the victims after receiving harassment training. The training presentation is the issue. It is implied that men need to be fixed. Any training that begins by telling a group of individuals that they are the issue will cause them to become defensive. After that, they're considerably less likely to want to contribute to the solution and will instead resist. With



harassment training, that is what takes place. Alternative approaches, such as management training and bystander-intervention training, have so been developed to address the underlying issue. Moreover, evidentiary norms are another aspect of the issue. Instead of the stricter "preponderance of evidence" threshold that courts apply to harassment allegations, many businesses utilize the "beyond a reasonable doubt" level to establish guilt. Due to this, it is incredibly difficult to establish guilt without such a confession or even a witness. However, the USA has also worked on other concepts, such as boosting the number of female managers and executives, that could aid in the fight against sexual harassment. However, the following strategies from the US should be embraced as they will aid India in reducing workplace sexual harassment.

Many victims will undoubtedly shy away from the attention, the formalities, the length of time, and the severity of the criminal justice system; this alternate structure and method is desirable but requires significant adjustment.

An inquisitorial approach by the Committee, naming the victim by using words like complainant, etc., and not using her actual name, and private trials are some areas that need improvement. These include assisting the victims in making informed decisions about the various resolution options, offering trained conciliators, settlement options through monetary compensation, and avoiding an inquisitorial approach. In addition to this, we require a mindset that allows us to comprehend the anxieties, obligations, and pressures experienced by female victims—something that the law cannot give us. The legal definition and standard of a "reasonable man" ought to include a "reasonable woman" as well. By leaving gaps in the powers and responsibilities of these non-judicially equipped organizations, the Act looks to be excessive in the redressal processes it has established.


In this study report, the flaws in the specific clauses are previously mentioned, along with recommendations for how they may have been handled better. Overall, the Act gives the sense that it was poorly written and lacked adequate consideration for the severe consequences of its execution. The implementation of the Act is complicated by these unclear clauses and unresolved issues, which need to be explained. However, the government should promote or organize periodic evaluations of the impact of sexual harassment policies within the profession, and on a national level and state level should likewise prioritize doing so.

Reducing Sexual Harassment requires altering the environments and settings inside organizations that promote Sexual Harassment. One step in altering the normative circumstances that encourage Sexual Harassment is the adoption of explicit anti-harassment laws and procedures. Sexual Harassment rules can provide a deterrent to individuals who are inclined to sexual harassment and give victims avenues for redress. Increased reporting, a better understanding of organizational policies, increased sensitivity to what defines Sexual Harassment, and a decrease in victim blaming and Sexual Harassment minimization are all benefits of Sexual Harassment training. Boys and men who participate in sexual assault prevention programmes are frequently encouraged to challenge traditional masculinity ideals and the social settings that foster sexual violence.

However, it's time to take strict action against the people who sexually harass women it's not just important for the women but for the nation too because then only women will be able to work safely and freely and be able to contribute to the nation.

## REFERENCES

- [1] Kustis, Gary A. (2016) *The Real Disclosure: Sexual Harassment at the bottom line*, Sage Publication, Vol. IX
- [2] Stockdale, Margret S., (1996) *Sexual Harassment in the workplace: Perspectives Frontiers and the response Strategies*, Sage Publications, Vol. V
- [3] Maypole, Donald E. (2016) *Sexual Harassment at work: A review of research and theory*, Sage Publication, Vol. II Issue I
- [4] Sperry, Lynn Bowes (2009) *Sexual Harassment at work: A Decade Plus of Progress*, Sage Publication, Vol. X Issue III
- [5] Reese, Laura A. (2018) *Policy Implementation and definition of Sexual Harassment*, Sage Publication, Vol. II

- 
- [6] Bryant-Davis, T., Chung, H. and Tillman, S. (2009). *From the Margins to the Center: Ethnic Minority Women and the Mental Health Effects of Sexual Assault. Trauma, Violence, & Abuse*, 10(4), pp.330- 357
- [7] Bryant-Davis, T., Chung, H. and Tillman, S. (2009). *From the Margins to the Center: Ethnic Minority Women and the Mental Health Effects of Sexual Assault. Trauma, Violence, & Abuse*, 10(4), pp.330- 357
- [8] Rahaman, Md. Razidur (2015) *Sexual Harassment at Workplace in South Asia: A Comparative Study on Bangladesh*,
- [9] India, Nepal, and Sri Lanka, *IOSR Journal of Business and Management*, Volume 17 Issue 6
- [10] Sirekha & Revathi Thomas, (2018), *Violence against Women in Tamil Nadu: A Historical Perspectives*, *International Journal of Research and Analytical Reviews (IJRAR)*, Vol:5, Issue: 4
- [11] Anagha Sarpotdar, (2017) *What it takes to implement a law on sexual harassment at the workplace in India*
- [12] Kapoor, V. and Dhingra, K. (2013) *Sexual Harassment women in India. OID-An International Journal of Sustainable Development*
- [13] Anju Thomas, (2015) *Incidents of Sexual Harassment at Ed. Institutions in India. International Journal of Recent Advances in Multidisciplinary Research Vol. 2 Issue 3*
- [14] Alok Bhasin (2007) *“Sexual Harassment Work”*, Eastern Book Company Publishing (P) Ltd, Lucknow
- [15] A.S Anand (2003) *“Justice for Women”*, Universal Law Publishing CO. Pvt. Ltd, G.T Karnal Road Delhi
- [16] Dr Charu Walikhanna (2009) *“Law on Violence against Women”*, Serials Publications, New Delhi
- [17] Monica Chawla (2013) *“Gender Justice”*, Deep and Deep Publications Pvt. Ltd, New Delhi
- [18] Sobha Saxena (2008) *“Crimes against Women and Protective Laws”*, Deep and Deep Publications Pvt. Ltd, New Delhi
- [19] Tom Dannenbaum and Keya Jayram (2005) *“Combating Sexual Harassment at Workplace”*, India Centre for Human Rights and Law, Mumbai
- [20] Rathore, Ishwar Singh (2020) *Study on Sexual Harassment of Women at Workplace in India*, *International Journal on Legal Science and Innovation*, Vol.2 Issue 3;231