
CAN WE BE BETTER EQUIPPED TO HANDLE SEXUAL HARASSMENT?

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ABSTRACT

Sexual Harassment is such a problem which every legal system in the world is facing. No matter how many laws are made to curb it it does not happen. As one can see in India, our capital New Delhi is famous for being unsafe for women while there is always an increase on the cases relating to eve teasing and sexual harassment at work place and other places too. Sexual harassment is common among marginalised women and girls, as is discrimination based on ethnicity, caste, age, sexual orientation, occupation, immigration status, or handicap. Females from lower socio - economic backgrounds, for example, may be riskier to harassment or mistreatment in their daily lives – for example, girls walking long distances from home to school may be more vulnerable to harassment or mistreatment, and women working in low-wage, insecure jobs may have fewer workplace protections against harassment. Physical and mental harassment can force women to skip working days, keep them from exploring new opportunities, or even force them to quit their careers, whereas sexual harassment can cause young girls to miss days of school or even stop going to school. Sexual harassment is highly frequent, according to research, and it affects women and girls all around the world. Three quarters of women in UK cities had experienced violence or harassment, compared to 79 percent of Indian women, 86 percent of Thai women, and 86 percent of Brazilian women.

Seeing such an effect of sexual harassment on the world where some countries have managed to reduce sexual harassment others have not with this research, the author would like to find out the issues faced by such nations and how some nations have managed to reduce sexual harassment and whether the mechanism which is responsible for the same in their nation can be applied in our country for the same. And even if such mechanism cannot be applied in our country with respect to the circumstances, then if we can find out a variant of such mechanism to work in the favour of curbing (not completely since it has not happened) Sexual Harassment in our country.

Introduction

Sexual harassment is one of the most prominent legal topics in India. It cannot be denied that we have fallen so low as to prey on the “weak” (in terms of caste class and gender) and some people need to prove their dominance over others by sexually harassing them. Being part of the world’s largest democracy would make its citizen very proud, however seeing the present conditions of women and the sexual harassment that they face every day tells quite a tale about how our society is functioning. It may not be a majority but quite a large number of people are found sexually harassing their employees, servants or anybody that they deem to be inferior to them. This behaviour reflects poorly on our nation. New Delhi’s infamous reputation of being rape capital and being unsafe for women is irrefutable evidence. As in the year of 2020, Delhi reported the highest number of sexual harassment cases against women in India which was over 320¹. Which is surprising since most of the year we were in a lockdown which should make the number of cases very less but however that was not the case further showing the depravity of the offender that nothing will stop them. It is to be understood that since the past millennium, women have been seen as nothing but the inferior gender. The society as a whole had set some expectations for women, such as being the homemaker, taking care of children and nothing more. The society adapted with time however some people are still stuck in the past. They cannot comprehend that women are equal to men and they have the choice to do whatever they want to do. These selective individuals still believe that females are the inferior gender and hence they think it is their right to assert dominance or sexually harass them however they see fit.

Usually, one would say that only gender becomes a dynamic which is a prerequisite for one to be dominant or submissive in such cases. However, this is nothing but a misconception even though gender plays a big role it is not the only prerequisite. Since ancient time the dalit/lower caste have been oppressed beyond no return and one can claim that it is not the case anymore but in the minds of the offenders, them being of a “higher” caste makes them feel superior to the ones belonging to the “lower” caste. Such superiority demands dominance and since there is no way to assert it, they find it only to do so subtly or sometimes openly in the form of sexual harassment. Such an example can be seen in the case of Hathras rape case. In this case a dalit girl was raped by four higher castes however it is not that surprising since dalit women have been oppressed for a long time even though the prevention of atrocities act is active in full

¹ <https://www.statista.com/statistics/633412/reported-cases-women-harassmen-india/>

force, what was surprising was the blatant disregard of the existence of this case as the policemen that no such crime has happened and it was only later when the news of this case spread like a wild fire when it shed some light on the administrations outlook towards this case. It presents a grim image for the people gas how women are supposed to be safe when the administration which is supposed to protect them acts in such a manner. Even, if you look at sexual Harassment in reference to other nations, they might not be very safe either but the fact of the matter is that they have been better at their job in controlling Sexual Harassment in their own nation. The main question which is to be answered by my research paper is that whether the principles adopted by these various nations and their legal systems are helping them in controlling sexual harassment, if yes then whether the same principles be applied to Indian Legal System or not. However, the problem which arose during this research is to choose whether to go for qualitative or quantitative as both are two different ways to measure crimes and apply various legal principles to predict their outcome. Seeing that quantitative research helps to understand the data easily. I chose to do Quantitative research. Since it will help me to shift through data easily to achieve my research objective which is to find the solution or be inspired by one of the legal principles which have been working in other nations so that they can work in India.

Indian Perspective

Even in the age of the MeToo movement, which saw survivors reveal their tales and resulted in the downfall of countless major people in politics, business, the entertainment sector, and beyond, sexual harassment is routinely neglected in India.

Women from many sectors of life shared their experiences of sexual harassment in India, which was no exception to the norm. Nonetheless, in India, where a woman is sexually harassed every twelve minutes, the practise continues to be depressingly frequent.

Shelter Homes

As per the recent figures issued by the National Crime Records Bureau (NCRB), Uttar Pradesh had the highest number of sexual harassment cases the same year, with 5,830. With 2,985 instances, Madhya Pradesh came in second, preceded by Maharashtra with 2,910 incidents. In 2017, Delhi had the highest incidents of sexual harassment in India, with 613 instances, followed by Mumbai (391 cases), and Kanpur (162). Telangana has the highest number of

workplace sexual harassment cases of any state. The state with the highest cases of sexual harassment on public transportation was Bihar.

The NCRB's findings brought to light the predicament of women living in shelters. Pune recorded the most sexual harassment incidents in shelter houses, followed by Mumbai. Uttar Pradesh had the highest number of sexual harassment incidents (239) in shelter homes, followed by Andhra Pradesh (65) and Maharashtra (65).²

"Only around 1% of sexual harassment complaints [in shelter homes] are registered," according to Lek Ladki Abhiyan, a Maharashtra-based advocacy group. "This is due to the fact that such facilities are run by members of the political party." We've addressed the government several times to request that a SOP [standard operating procedure] be implemented, but we have yet to receive a good response."

"Both government and private sector internal committees lack the power to act on sexual harassment accusations," said Vijaya Rahatkar, head of the Maharashtra State Commission for Women. "Members of such committees are unaware of the legislation and are fearful of retaliating against older citizens." One of the reasons why so few individuals filed complaints was because of this. We've requested the government to make online sexual harassment training mandatory for company employees in order to educate them about their rights." In India, public transportation is one of several areas where women might face sexual harassment.

Sexual harassment is a risk in all aspects of life, according to the NCRB data: at shelters, at work, at home, and on public transportation. As an example, the number of sexual harassment claims filed by BSE 100 businesses increased by 14% this year.

In some ways, this was welcome news. "Women are more willing to disclose any occurrence of sexual misconduct these days, and it is the obligation of organisations to quickly respond," said Suresh Tripathi, vice president of Tata Steel's human resources management. "Prompt action by organisations will prevent others while also encouraging women to come forward and disclose." As a result, "more reporting is excellent to start with as it shows there is greater awareness," says Tripathi.

² <https://www.healthissuesindia.com/2019/10/30/sexual-harassment-in-india-a-crisis/>

For several years, India has seen an upsurge in the number of sexual harassment instances recorded. Between 2014 and 2017, the number of instances reported increased by 54%. Despite this, there is a reported discrepancy. Last year, it was revealed that 99 percent of incidents of sexual assault went unreported. According to Reuters in 2016, police in certain places do not even file allegations of sexual harassment. Fears have been made that the MeToo movement would lose steam in the aftermath of high-profile cases being reportedly mishandled, ongoing underreporting, and flaws in the country's sexual harassment legislation making it more difficult for women to come forward.

The Supreme Court of India, which issued the Vishaka Guidelines, which establishes rights for women in the workplace in India.

The Supreme Court's Vishaka Guidelines were expanded in the 2013 Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, which defined what defines sexual harassment and established guidelines for what organisations must do to protect their employees from the practise and how to deal with issues wherever they occur. The legislation, however, has been disputed. Activists believe that the law simply does not work in dealing with sexual harassment, something the administration is conscious of and aims to rectify with stronger legislation. As per Monica Sakhraani of the Tata Institute of Social Sciences, who wrote in *Economics & Political Weekly*, the Act restricts the rights of women, dilutes due process rights, and reduces the responsibility of companies" (EPW). Sakhraani has filed multiple lawsuits, ranging from an unduly strict statute of limitations, which requires a complaint to be filed three to six months after a breach, to "a large gap in laying out the way of conducting the inquiry." EPW, on the other hand, alluded to a more profound truth. To handle sexual harassment and assault in general, legislation alone is insufficient.

The core causes of workplace sexual discrimination and bigotry must be addressed. "Strengthening the legislation, prescribing severe fines, and establishing Internal Complaint Committees are not enough," the newspaper adds. "The wider issue of the workplace's intrinsic gendered power dynamics has to be addressed." As a result, despite efforts to address the issue, sexual harassment continues to be a problem in India, which was once dubbed the world's most hazardous country for women. "India has shown a complete disdain and contempt for women... "Rape, marital rapes, sexual assault and harassment, and female infanticide have continued unabated," stated Manjunath Gangadhara, a Karnataka state government employee, at the time. "Violence against women has humiliated the [world's] fastest expanding economy and leader

in space and technology." The recent case of an infant girl who was buried alive served to remind of the country's gender bias, which has resulted in the deaths of 239,000 girls under the age of five each year due to endemic sex-selective abortion (despite the fact that it is illegal in India) and postnatal gender discrimination. The danger of workplace violence and harassment adds to a lack of female involvement in India's labour force, at a significant cost to the economy and the country's socioeconomic growth. Without tackling both sexual harassment and violence, as well as the factors that allow it to spread across the country, India's socioeconomic progress would be hampered, and the security and wellbeing of its female population will be jeopardised.

Power Harassment in Japan

Since assuming office in 2012, Prime Minister of Japan Shinzo Abe has prioritised women's empowerment as part of his "Abenomics" economic plans. He stated in 2013 that he wants to make Japan a place "where women may shine." However, detractors point to Japan's elevenplace drop in the World Economic Forum's worldwide gender equality rankings from last year as proof that the regulations aren't benefiting women. The inability to address widespread workplace "power harassment," according to those same opponents, is a key stumbling block. Power harassment, is a condition used to describe bosses' abusive, discriminating, or exploitative behaviour against subordinates. Despite the fact that harassment is a global issue, Japan's tight hierarchy and culture of micro - management and subservience have produced a workplace where power harassment is rampant. According to En Japan, a job-search service, 82 % of employees over the age of thirty-five had experienced power harassment. In the 2018 fiscal year, the number of complaints regarding workplace harassment and bullying hit an all-time high of 82,000.

Power Harassment was criminalized in corporations which hold more than 50 workers and any corporation which exceeds this number is responsible to take necessary steps to avoid it, by creating awareness and preparing the workers for the same. It is Also mandatory for respective corporate branches to be created to tackle such issues if the problem still persists even after the first approach. There is also a law made which prevents the offender from actually taking revenge from the complainant.

The law's application to job seekers, however, is ambiguous because it merely stipulates that "equivalent precautions" should be done. In addition, the rule never extends to those who are

not fixed employees, who are already denied the minimum wage, legal paid sick leave, maternity benefits, and others. The ILO's Convention on Violence and Harassment in the Workplace, on the other hand, mandates that both be protected in the workplace. The law, on the other hand, is the first in the country to safeguard LGBT people in the workplace. Power harassment is defined as "outing" an LGBT person or disparaging a person's sexuality or gender identity, according to government advice on the legislation. The government intends to impose strong sanctions on government workers who engage in power harassment, but the legislation does not punish businesses that do not comply. The state has promised to name and humiliate corporations who refuse to cooperate, but it is unclear whether this would be successful.³

Loi Schiappa In France

Marie Laguerre became a symbol of the endemic problem of street harassment in France when a video of her being harassed and then attacked after responding to a harasser on the street went viral in 2018.

In the same year, the French legislature was revising its legal code to include the idea of sexism. Since then, the Loi Schiappa, a law prohibiting verbal sexual harassment and named for Marlene Schiappa, France's previous minister of gender equality, has revolutionised the fight against street harassment. While other countries have made street harassment illegal, Louis believes France's approach is unique in that it allows police officers to pursue abusers immediately rather than waiting for a protracted and arduous trial afterwards. If a cop sees somebody harassing someone on the street, he'll approach them, tell them they've broken the law, and prosecute them.

Despite the fact that the law sends a powerful message for broader cultural reforms, she feels a larger revolution will take longer. "It's a struggle for everyone; one legislation isn't enough." "Civil society must mobilise, politicians must mobilise, and we are working hard on it," she adds, "but It can be felt that on such fundamental, social issues as human rights, it is everyone's business."

In the sense that it was the first time we put the notion of sexism into French legislation, the Loi Schiappa was a genuine revolution. Prior to 2018, there was no idea of sexism in civil or criminal law in France, and the purpose was to not only establish this new crime, but also to

³ <https://www.humanrightspulse.com/mastercontentblog/new-anti-harassment-law-introduced-in-japan>

amend existing ones so that people understood that sexism is not permitted in our society. That was a huge step in the right direction. The concept of a sexist offence was created on the ground after multiple reports and missions by three of my parliamentary colleagues, as well as changes in civil society.

Many were first afraid that there might be a blurry line between what we could call flirting and street harassment, but there isn't one. These behaviours are undesirable and suggest that the first degree of sexist and sexual violence was not sufficiently punished. There are two elements to this law that are designed to punish it. The first is, of course, the capacity to punish street harassment perpetrators, but it is also, and perhaps more importantly, the ability to raise public knowledge about what counts as street harassment. There is a lot to be said about stating that it is illegal, since it makes it much simpler to create awareness and educate people about it.

There was also a worry that this infraction would fail in the end, but it turned out to be rather effective on the field. It addressed a gap in the law by allowing for the punishment of acts that had previously gone unpunished. It provides law enforcement officers and transportation agents with a useful tool. They are no longer powerless in the face of such behaviour.⁴

Can this be applied?

The author believes that both the Laws which we have observed before can be applied in our country. Let us take the case of Japan's Stance towards power Harassment is basically countering the sexual harassment at workplaces as well. Due to many reasons this legislation can be viable in Indian Scenario. Firstly, because it would not only bring up security of women at the workplace but also because it will increase the efficiency of work done leading to more economic profit on a wide scale. This law protects the employees from their superior's discrimination and harassment. Most of the sexual harassment at work cases usually see the case when there is the boss who is using his influence to sexually harass his female employees. This is the most common form of sexual harassment and it is also the major reason why a lot of these sufferers do not speak up as they feel that their superior would do something to retaliate such as fire them, increasing their workload, demoting them and so on. The system which is being referred to takes care of that as it ensures that the offender does not get a chance to retaliate. This system also makes sure that the victim does not suffer and unlike suppressing

⁴ www.forbes.com/sites/stephaniefillion/2021/01/26/2-years-later-what-we-can-learn-from-frances-anti-catcalling-law/?sh=11c55f2f75dc

their voices it would assist them in raising their voices against such instances. The very simple Counter argument to this is that the Indian Corporate world is too large and too diverse and this law would not sit well with the masses or the corporate world. However, it is my opinion that since this legislation is made keeping in mind the Japanese corporate world which is still known as one of the busiest corporate hubs due to large no. of working hours and their work ethics. If this scheme can work there, it can do wonders here.

Now talking about the French Principle of Loi Schiappa is a bit more on the new side. Since, it's a relatively new concept but it has shown promise as it does not directly lead to these offenders being put in prison but it puts a hefty fine on a person who sexually harasses another person is given a fine. However, even though not much was expected from this law, it has done a miracle work. This law basically does not care whether the person was simply flirting or not; if he makes someone uncomfortable then the police can go up to him and give him a fine. And the special thing is that it gives the police enough freedom to intervene if they think that the victim of sexual harassment or catcalling is not able to. This Principle can work very well too but the argument against it is raised that it leads to only fine but not imprisoning and it makes it so that sexual harassment is nothing more than breaking a traffic rule. However, it is to be notified that this law is only applicable to instances of catcalling which sexually harass women and if a person is sexually harassed in any other form, then the current existing rules apply. If this law is brought into force, it will not only discourage catcalling and objectification of women but also will make sure that a person will not attempt to sexually harass another if they know that they can easily be caught and then they have to pay a huge fine.

Conclusion

The author agrees that with time we have moved on and developed ourselves and made us more conscious of our own wrongs. With the history we have had as Indians, it cannot be denied that a few of our past practices were morally wrong and we have accepted that. Just as we have accepted that women are equal to men. It is just a few people who are committing this sexual harassment who are not able to understand that any employee may he/she be of any gender, race, caste, class does not make him/her any inferior to you. After all we are all humans, The govt. Is trying its best to solve this issue but it will not be any good until these offenders can understand that they are not the superior sex and women are equal to men in each and every way.