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# COMPARATIVE STUDY OF SEXUAL HARASSMENT WITH MAJOR COUNTRIES OF THE WORLD: A PROTECTIVE APPROACH

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## ABSTRACT

In India, sexual violence affects a large number of women and girls, which includes rape, harassment at work and between couples. To prevent sexual violence against women, an act known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act, 2013, was enacted, and a new section 354A-D was added to the Indian penal code in relation to sexual harassment. Sexual harassment violates the fundamental rights of women, including the right to equality guaranteed by article 14, the right to life guaranteed by article 21, and the right to practise a profession, trade, or business in a safe environment free of sexual harassment as specified in article 21 of the Constitution of India. Before the enactment of this act, only the Indecent Representation of Women Act (Prohibition Act) was used to address sexual harassment at work to a certain extent. However, the act does not penalise behaviour that constitutes sexual harassment, such as forcing women to view indecent material at work without their consent. According to the act, companies are liable only if they use books, photographs, paintings, or films that portray women indecently. Furthermore, the act came 16 years after the Supreme Court's decision in the case of Vishaka vs. the State of Rajasthan, in which the apex court directed the Union of India to enact legislation to prevent workplace sexual harassment. In this case, a woman was brutally gang raped by five people. This case is a landmark case in regards to sexual harassment. It outlined guidelines requiring all employers to provide a mechanism for resolving sexual harassment complaints in the workplace<sup>1</sup>. With reference to the guidelines in the case, the POSH (Prevention of Sexual Harassment Law Act) is made. In this article, we will go over the various provisions of the act in order to get a better understanding of sexual harassment from an international perspective.

**Keyword:** Sexual Violence, Sexual Harassment, Sex Discrimination, Laws, Rights, Life, Measures, Guidelines, Violation, Workplace, Employer, Employees, Complaint, Punishments, Prohibition.

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<sup>1</sup> AIR 1997SC 3011

“The day a woman can walk freely on the roads at night, that day we can say that India has achieved independence.”

-Mahatma Gandhi

### **Introduction:**

The term "sexual harassment" refers to unwanted and undesired verbal or physical behaviour, particularly when it involves one individual acting sexually toward another.

According to the Indian Penal Code and the Sexual Harassment of Women at Workplace Act of 2013, any of the following behaviours by a man is illegal: Sexual harassment includes unwanted or excessively sexual physical contact, demands or requests for sexual favors, forced viewing of pornographic material, and sexually charged remarks.

According to the Cambridge Dictionary, sexual harassment refers to inappropriate comments, suggestions, or behaviour, especially when it comes from a boss or other individual in a position of authority.<sup>2</sup>

The Preamble of the Indian Constitution aims to guarantee equality of opportunity and status for all of its citizens. The constitution's articles 14, 15, 16, and 17 all mention the doctrine of equality. Article 14's right to equality before the law or equal protection under the law, establishes a broad promise of equality for everyone. Because of the historical disadvantages that women have faced, Article 15(3) establishes the principle of substantive equality in favour of women and gives the state the authority to take special measures for women. Article 15 prohibits discrimination on the basis of religion, race, caste, sex, or place of birth.

Indian courts did not acknowledge sexual harassment till the middle of the 1990s. Although the court in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* interpreted "outraging the modesty of women" to encompass "outraging the dignity of a woman," it nonetheless acknowledged sexual harassment as a crime under section 354 of the Indian penal code.<sup>3</sup> Moreover, in the case of *Saudi Arabian Airlines vs. Shehnaz*, it was observed by the court that the dismissal of a female worker on a complaint of sexual harassment was an unfair labour practice.<sup>4</sup>

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<sup>2</sup> <https://dictionary.cambridge.org/dictionary/english/sexual-harassment>

<sup>3</sup> AIR(1995)6SCC194

<sup>4</sup> 1999(1) Bom LR 687

In between, we missed the most prominent case of sexual harassment, which is Vishaka vs. the state of Rajasthan (1992). Due to gaps in the law, female workers in the nation were left without legal redress when sexually harassed, making this the first instance to call for laws to protect women from such behaviour.

The Victim seeks for a law to punish the perpetrators. The perpetrators brutally gang raped her because she was raising awareness about prohibiting child marriage. The victim was employed by the Rajasthan government, and one of her responsibilities was to raise public awareness about the illegality of child marriage. As a result of growing outrage over sexual harassment of working women, the apex court established specific guidelines in the case of the aforementioned case to end sexual harassment of women at the workplace in accordance with the UN Convention on the Elimination of All Forms of Discrimination against Women, to which India is a signatory.

### **Historical Background:**

In the later Vedic culture, women's standing began to decline; before that, they had an equality with men. Since the later Vedic era, all moral and social laws created by a male-dominated culture have disregarded their identity, uniqueness, and integrity. In the name of tradition, they began to suffer from cruel and immoral behaviour. The practise of suppressing Indian women dates back to ancient India, when Manu stated in his code that if a wife disrespects her husband—regardless of whether he is dead, foolish, impoverished, blind, deaf, short-tempered, or in tremendous distress—she will endure all the torments of hell. Her main religious obligation was verbal, and she died at her husband's feet. According to the Taitriya Samhita, a woman is merely meant to be a sexual object of pleasure. In a game played by males, women can be used as shuttlecocks.

When it comes to criminalising marital rape, there is currently a loophole in Indian rape legislation. Women are treated as the husbands' property under laws that specifically permit marital rape, which leaves them open to sexual abuse and violence during marriage. According to data made public by the national crime record office, overall crime against women has climbed by 7%. The percentage of rape cases reported in 2019 was 7.3% of all crimes against women that year. The most common charges filed in these cases were "cruelty by husband or his family" (31.9%), "assault on women with intent to violate her modesty" (21.8%), and "kidnapping and abduction of women" (17.9%). According to a poll done by the Thomson

Reuters Foundation in 2018, India is the nation where women are most at risk of sexual assault, cultural practises, and human trafficking.<sup>5</sup> According to the foundation, the second-most populous country in the world, with 1.3 billion inhabitants, was rated as the most dangerous on three of the topic questions—the risk of sexual violence and harassment against women, the threat posed by cultural, tribal, and traditional practices, and the nation where women are most at risk from human trafficking, which includes forced labour, sex slavery, and domestic servitude.<sup>6</sup> As a result, India has not been able to accomplish much in terms of empowerment and safety for women even after independence. I just want to draw attention to a recent case of sexual harassment in which a 32-year-old man harassed a woman over the phone and was arrested for violating sections 354 (Assault or criminal force against a woman with the intent to violate her modesty), 354A (Sexual harassment and punishment), 354C (Voyeurism), 354D (stalking), and 509 of the IT Act (word, gesture, or act intended to insult the modesty).<sup>7</sup>

### **What steps are being taken to stop sexual harassment?**

#### **➤ Indian Perspective**

The beginning of the measure shall be taken into consideration from the landmark case *Vishaka vs. the state of Rajasthan*. It established specific provisions to safeguard women's rights to life and dignity, not just at work but also as a general advancement of women's rights. In the above mentioned case, a petition explaining the miserable and drastic condition of women who worked as social workers for the government of Rajasthan was brutally gang raped, which deeply impacted the whole of India and its culture. In order to safeguard the dignity and modesty of a woman, the court passed the guidelines in a writ petition which was filed, praying for the safeguard of the dignity and modesty of women. Because there was no specific law relating to the prevention of sexual harassment, the Supreme Court established guidelines that are used as a preventive measure to combat such inhuman acts that taint women's dignity. The guidelines will be binding and must be strictly followed in all public and private sector jobs. The apex court had issued the guidelines with the assistance of a global convention to which India is a signatory, i.e., CEDAW (the convention on the elimination of all forms of discrimination against women).

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<sup>5</sup> <https://thewire.in/women/average-87-rape-cases-daily-over-7-rise-in-crimes-against-women-in-2019-ncrb-data>

<sup>6</sup> <https://www.thehindu.com/news/national/global-poll-says-india-most-dangerous-country-for-women/article24260750.ece>

<sup>7</sup> <https://timesofindia.indiatimes.com/city/madurai/tamil-nadu-man-held-for-sexually-harassing-women-over-phone/articleshow/84681455.cms>

Therefore, let's examine what the guidelines are made by the court:

1. Employers and other responsible parties have a duty to take all necessary precautions to avoid or deter sexual harassment at work places and other institutions, as well as to establish channels for the resolution, settlement, or prosecution of such conduct.
2. Sexual harassment involves unwanted sexual activity such as touching and advances, asking for or demanding sexual favours, making sexually suggestive comments, or showing pornography (whether directly or indirectly). Negative consequences may be applied if the victim objects to the action in question or refuses to give their consent. It is discriminatory when a woman has good reason to think that objecting will place her at a disadvantage in her career or work.
3. The employer is required to take the appropriate legal action by submitting a complaint with the appropriate authority in cases where such behaviour constitutes a particular violation under the Indian Penal Code or any other legislation. When dealing with allegations of sexual harassment, it should ensure that victims or witnesses are neither traumatised nor subjected to discrimination. Sexual harassment victims should have the choice to ask for their own transfer or the transfer of the offender.
4. The employer must implement the proper disciplinary measures in accordance with the applicable service regulations if such behaviour is deemed workplace misconduct, as that term is defined by those regulations.
5. A suitable complaint system should be developed in the employer's organisation to resolve the victim's complaint, regardless of whether the action in question is illegal or violates the employer's service guidelines. Such a complaint mechanism should guarantee that problems are resolved quickly.
6. The aforementioned complaint system need to be enough for offering, as necessary, a complaints committee, a particular counsellor, or other support services, while also protecting confidentiality. A woman must serve as the Complaints Committee's chairperson, and at least half of its members must be female. It is required to submit an annual report to the relevant government department detailing the complaints and actions taken. The committee's compliance with the aforementioned rules will also be reported to the employers and person in charge.
7. At work meetings and other suitable forums, staff members ought to be able to bring up the sexual harassment issue.

8. By prominently promoting the guidelines and pertinent legislation when they are swiftly passed, the rights of female employees should be raised in this regard.
9. The employer and person in charge will take all necessary and reasonable actions to give support and preventive action to the affected individual when sexual harassment arises as a result of an outsider's conduct or inaction.
10. All employers and those in control of workplaces, whether in the public or private sector, should abstain from sexual harassment. Without respect to the scope of this commitment, they should take the following actions: sexual harassment at work, as described above, is expressly prohibited and must be promptly announced, made public, and circulated. Government and public-sector organisations should have policies against sexual harassment and appropriate sanctions for offenders in their behaviour and disciplinary rules and regulations. Private employers should take steps to ensure that the Industrial Employment (Standing Rules) Act, 1946's standing orders contain the aforementioned prohibitions.
11. The Central and State governments are urged to take appropriate action to ensure that the rules outlined in this order are followed by all employers, whether they are in the public or private sector. Once the proper legislation is enacted to occupy the space, these directives will be enforceable and legally binding.

On the basis of the aforementioned rules established by the court in the Vishaka case, Parliament passed an Act in 2013.

➤ **Other Countries taking measure to combat the sexual harassment:**

1. **United States of America:** Women are safeguarded against sexual harassment and other forms of sexism by Title VII of the Civil Rights Act of 1964. In the case of Meritor Savings Bank vs. Vinson, the apex court recognised sexual harassment as a form of sex discrimination. The court observed that it is unlawful for employers to allow anyone to be sexually harassed at work by anyone else, regardless of sex, gender, or sexual orientation.<sup>8</sup> As the year went on, the government created a sizable body of laws and guidelines to stop sexual harassment. According to a 1991 modification to Title VII of the Civil Rights Act of 1964, victims of sexual harassment may file lawsuits for damages under federal laws prohibiting such behaviour. The purpose of the law is to hold employers responsible for fostering a workplace free from harassment and other

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<sup>8</sup> 477 US 57(1986)

forms of discrimination. The law has developed into a potent instrument for women seeking equitable redress, including reinstatement, back pay, and suitable injunctive action.

2. **United Kingdom-** The Equality Act of 2010 forbids sexual harassment in the UK and recognises it as a kind of unlawful conduct. According to the law, sexual harassment is any unwanted behaviour that is based on sex and that violates someone's dignity or contributes to the creation of an intimidating, hostile, demeaning, humiliating, or offensive environment. The law makes it clear that if a victim of harassment wants to file a claim, she must do so within three months of when the discriminatory act first started. The tribunal may grant compensation in an amount corresponding to the complainant's losses. In the UK, employers are responsible for sexual harassment perpetrated by their employees, even if the harassment was unintentional or not known to management. If an employer can demonstrate that it has made all necessary efforts to prevent harassment in this situation, it has a defence.
3. **Canada:** Every territory and province in Canada has a Human Rights Act that forbids sexual harassment of workers. The Canadian Human Rights Act of 1985 applies to all employees working for federal agencies. The legal system in Canada has an undoubtedly high cost because it covers harassment that takes place outside of regular working hours as long as it falls under the definition of employment and not just at the workplace. In the case of *Robichand v. Canada (treasury board)*, the court ruled that employers have a responsibility to protect employees from sexual and other types of harassment at work and may face legal consequences if they fail to do so.<sup>9</sup> As of right now, harassment is defined by Canadian human rights law as any discriminatory act committed against a person in connection with goods, services, accommodations, or matters pertaining to employment. If conciliation cannot be reached, the complaints must be heard by the human rights commission or Canadian human rights commission, or they may be sent to the Canadian human rights tribunal.
4. **South Africa-** There is no explicit law that forbids sexual harassment in the workplace in South Africa, and the term "sexual harassment" has never been defined. In the case of *Pick 'n Pay shops Ltd. v. Individual*, the court ruled that sexual harassment is unwanted conduct that is of a sexual nature and might take the form of physical, verbal, or nonverbal behaviour. Sexual harassment was first recognised as a legal term in 1994.

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<sup>9</sup> (1987)2SCR 84

The behaviour must degrade a person's self-respect or foster an unfriendly or hostile environment. According to the Employment Equity Act of 1998, the South African Labour Court oversees women's employment rights. The court has the authority to award compensation, damages, and to issue orders for employers to take precautions against sexual harassment. An employer will be punished for engaging in unfair trade practices if no substantial action is taken against the claim.

5. **Australia**-Sexual harassment is defined in Australia by the Sexual Discrimination Act of 1984. Sexual harassment is defined as an unwanted sexual approach, an unwanted request for sexual favours, or unwanted sexual behaviour that would reasonably be expected to cause the victim to feel humiliated, intimidated, or insulted. The act forbids workplace participants from harassing one another sexually. An employer or employee, a commission agent or contract worker, or a partner in a partnership are all considered workplace participants. In addition, the act's section 105 forbids and punishes the act of sexual harassment, and employers are held vicariously liable for employee harassment unless they take all necessary precautions to stop it in accordance with the act's section 106.
6. **New Zealand**- This nation also forbids and defines sexual harassment. There are two pieces of legislation that protect women from harassment, i.e., the Employee Relations Act of 2004 and the Human Rights Act of 1993. The Employment Relations Act of 2004 defines two types of sexual harassment in Section 108. The first one states that when an employer requests sexual activity, such as sexual contact or other forms of sexual activity, that the request contains implied employment-related threats or promises, and the second one states that when an employee is subjected to sexually explicit language, visual material, or physical behaviour that is offensive to them or that is repeated, it can have a negative impact on their employment. Additionally, employees have 90 days from the alleged act to file personal grievances. While the Human Rights Act of 1993 defines the same term as "any unwanted or offensive sexual behaviour that is repeated or serious enough to have a negative impact.
7. **Italy**-Sexual harassment is defined in Italy's "Code of Equal Opportunities Act" as a form of discrimination that involves unwanted sexual behaviour that is communicated in any way that violates or is intended to violate an employee's dignity or creates a work environment that is intimidating, hostile, demeaning, humiliating, or offensive. An employer is required to launch an early and thorough investigation after receiving a complaint of sexual harassment from an employee. If the harassment accusation is



validated, the employer must take the proper disciplinary action, which may include firing the harasser, depending on the gravity of the situation. Even if the employer is not the harasser, it may nevertheless be found liable under Article 2087 of the Italian Civil Code because of the general responsibility to ensure the health and safety of all employees. Therefore, it is the duty of businesses to forbid and punish workplace sexual harassment. They should take all necessary measures to create a secure workplace where everyone's dignity is upheld and social interaction is encouraged (based on the equality principles outlined in the Italian Constitution).

8. **France**-Sexual harassment is a crime in France and is defined as any unwanted sexually explicit verbal, nonverbal, or physical behaviour that violates another person's dignity, especially when they are engaged in creative endeavours. an unpleasant, aggressive, demeaning, humiliating, or menacing tone. When a claim of sexual harassment is made, the employer should immediately inquire with employee representatives to determine whether the claim is legitimate. The matter should be explained to the occupational doctor, who should also take part in the investigation. If sexual harassment was found to have occurred, the harasser should be fired. As part of their general need to promote a safe working environment, employers have a responsibility to safeguard employees against harassment at work. If an employer does not act after being accused of sexual harassment, the problem is likely to get worse. The victim has the option to sue the employer in court for damages for failing to provide a secure workplace and may even assert constructive dismissal to terminate the employment contract. This would include a demand for reimbursement for all termination-related expenses and punitive damages for wrongful termination.

### **Critical Analysis of the Act made the Parliament:**

The whole act is divided into 8 chapters, each consisting of 30 sections. The first chapter of the book lays out the applicability, definition, and measures to protect employees from workplace harassment. The Sexual Harassment of Women at the Workplace Act specifies that it is applicable to the entire country of India. The definitions of the terms used in the act are provided in this chapter to aid in understanding. It defines terms like sexual harassment, workplace, aggrieved women, employer, employee, domestic worker, etc. Moreover, it also lays down what constitutes sexual harassment and what not.

Chapter 2 outlines the steps for creating a complaint committee where a complaint about sexual harassment can be made and remedial action can be conducted. The committee will be led by a woman who holds a senior position inside the company, and it will be made up of two members with experience in social work or legal knowledge, as well as one member from a non-governmental organisation or association who is knowledgeable about sexual harassment concerns. Members will serve three-year terms.

Chapter 3 outlines the steps for setting up the district-level committee. The government is required to create a local complaints committee to look into and address complaints of sexual harassment coming from the unorganised sector, businesses without an internal committee because they have fewer than 10 employees, or businesses where the complaint is against the employer.

Concerns brought to the Internal Committee and Local Committee are covered in Chapter 4. When a woman feels wronged and wishes to file a complaint, she must do so within three months of the incident by sending a written complaint and supporting evidence to the committees. The complaint deadline may be extended by the committee with justification documented in writing. Any of the heirs of the wronged women may make a complaint if the aggrieved ladies are unable to do so due to physical or mental incapacity. The powers granted to a civil court by the Code of Civil Procedure, 1908 when trying a case with regard to summoning, enforcing the attendance of any person, examining him under oath, requiring the discovery and production of documents, and any other matter which may be prescribed, would be exercised by the committee when it is investigating a complaint of sexual harassment.

The investigation of complaints to safeguard the interests of wronged women is the subject of Chapter 5. She ought to be moved to another place of employment; the respondent ought to be moved; she ought to be given a three-month leave of absence; or the committee might impose additional relief. A report regarding the complaint should be delivered to the employer or district officer within 10 days of the conclusion of the investigation. If a false accusation is determined to have been made in an investigation report, a district officer or employer is instructed to take action against the woman. The employer is required to take appropriate measures for misbehaviour if the respondent is found guilty.

Employers are required to provide a safe working environment at the workplace, to display information about the criminal penalties for sexual harassment in conspicuous places, to

organise workshops and awareness programmes to familiarise employees with the Act's provisions, to provide the Internal Committee or Local Committee with the necessary facilities for handling complaints, and to perform other duties as specified in Chapters 6 and 7 of the Act. Furthermore, the District Officer shall monitor the timely submission of the Local Committee's report and, with the assistance of non-governmental organizations, raise awareness about sexual harassment and women's rights.

In the act's final chapter, which deals with noncompliance, it is stated that failing to form a committee or failing to adhere to the Prevention of Workplace Sexual Harassment Act's criteria might result in fines of up to INR 50,000. If the same offence is committed again, the punishment may be increased, and his licences or registration for his official business may be revoked.

### **Conclusion**

The sole purpose of enacting the Sexual Harassment of Women at Workplace Act was to protect rights and dignity of women at work by prohibiting sexual harassment, as well as to prevent and resolve complaints of sexual harassment, and to deal with things related to or incidental to that. As earlier there was no specific law which aims to prevent the sexual harassment in both the sector i.e. private sector and public sector and penalize the perpetrator. Therefore an act was needed to curb the increasing cases of harassment and to ensure that the women are working at workplace in a safe environment.

Many laws are there in existence against sexual harassment but they all are losing its credibility because of its flexible nature. The pro players mould these laws out of their socio and political influence in the society. So it is necessary to make such legislation which is harsh in nature and rigid as well. There should be a special body constituted by the Supreme Court or Ministry of Women and Children's affairs and it shall look into the matters related to sexual harassment with women at workplace. Where the laws interpreted strictly, less number of perpetrators shall be there.

The safety or the protection of women and children are the prime consideration for a state or the nation as well. This is one of the factors which has major role in the world safety index. So the three pillars of the nation should look after it and save them from any kind of exploitation and harassment where it is domestic violence, socio-cultural violence, sexual exploitation or

discrimination on the basis of gender. The laws should be made as a gender neutral that justice favour no one in particular but everyone in general.