

Sexual Harassment of Women: A Conceptual Review

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ABSTRACT

Every individual has certain rights guaranteed by the law of the land, and these rights are important for an individual to lead a life worth living. As the world is evolving with each passing minute and man is trying to reach the apex of civilization, there are certain issues that need to be addressed so that everyday life remains beautiful to all with no gender bias. One important issue that women face is harassment, which can take many forms. Although the definition of it is seemingly different for everyone, the outcome of harassment is a common thread. The paper is an attempt to understand the causes and impact of harassment, and the genesis of legal framework to address the issue.

Keywords: Harassment, Equality, Stress

INTRODUCTION

The Doctrine of Equality is embedded in the Constitution of India, under the Preamble of the Constitution and Article 14 of the constitution, explicitly. Right to Equality is a fundamental right that is guaranteed by the Constitution of India, unlike legal rights which are guaranteed by certain legal machinery. The fact that the ideology of equality is guaranteed by

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the Constitution of India speaks volumes about the importance of equality and the emphasis that the founding fathers of the constitution have placed on it.

It is the legal, ethical, moral, and social right of every woman to have a safe workplace. The term sexual harassment was first coined in the USA for the first time, and from there the term has been utilized by other countries. An international convention by the UN general assembly was adopted in 1979; it was called the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). It gives greater importance to the fact that any inequity on women's dignity in the modern era violates the principle of equality of rights. The law was brought into existence to bring fairness among the rights of both genders.

OBJECTIVES

- To understand the genesis of the legal framework for sexual harassment.
- To understand the underlying cause of the sexual harassment of women and to identify the sources of sexual harassment of women.
- To understand the impact of sexual harassment on women.
- To formulate a conceptual framework of sexual harassment of women.
- To provide suggestions to stop this social epidemic against women.

LITERATURE REVIEW

The definitions of sexual harassment given by MacKinnon (1979), Aggarwal (1992), and Stanko (1988) examine sexual harassment from the perspective of gender relations and brings out its impact on women. These definitions enumerate that sexual harassment at the workplace is an unwanted, sexually-oriented behavior, resulting because of unequal power relations at the workplace; it has serious consequences on women employment. Haspels et al. (2001) define sexual harassment as a clear form of gender bias based on sex, and an expression of unequal power relations between men and women. The International Bill on Human Rights of Women, introduced by the United Nations general assembly in the year 1979, was later ratified by India as well. The bill is called the "United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)". The bill advocates for the impartiality of

women and men in terms of human rights, and basic freedom in the political, economic, social, cultural, and civil spheres. In India, the term was used in a legal sense in the judgement of *Vishaka vs. State of Rajasthan* in the year 1997, resulting in the formation of a comprehensive legal framework called the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”. Sexual harassment can be defined in two ways: one as a situation where a person conditionally or unconditionally makes sexual requests, usually in exchange for some benefits, and second, as an “antagonistic environment”, which refers to sex-related behavior, making the person feel harassed or uncomfortable, thereby creating a scary working environment (Smolensky & Kleiner, 2003).

The Yugantar Education Society (2003) study describes this as a “slow poisoning process”, which starts with staring and obscene body language, and if not acted upon at that time, culminates in sexual favors and body contact. The Saheli (1998) survey also confirms that sexual harassment continues because most women find it difficult to take action fearing job loss. Sakshi (2001) reiterates that women remain silent and refuse to report harassment fearing loss of reputation, stigma, and blame falling on them despite being the victim. Explained by Fitzgerald and Cortina (2017) women face the negative effects of harassment; it affects them mentally, socially, emotionally, and so on. Despite facing so many issues, women are afraid to report harassment due to an assumption that her self-esteem will be threatened, and the risk of secondary victimization—women fear facing the doubts of others, scrutiny, and blame that may accompany their experience of harassment (Foster & Fullagar, 2018).

Genesis

In India, the origin of the legal framework for sexual harassment dates back to 1992 when Bhanwari Devi, a rural level worker was engaged by the State of Rajasthan to work for the prevention of child marriages in the village. However, hoping to solve this problem, the worker herself was a victim of a bigger crime. Considering her to be someone who was against their age-old rituals and ways of living, she was often troubled and harassed by the men in the village. Although she reported the harassment to the establishment no action was taken. As a result, Bhanwari Devi was gang-raped by the men of that community. Later, a PIL was filed by Vishaka before the Apex Court against the State of Rajasthan. The Supreme Court, in a milestone judgement, created a series of legally binding guidelines

which balance the right to equality embedded in the Constitution of India and CEDAW. The guidelines are applicable to all sectors – public, private, and voluntary. The Apex Court of the country has defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. It also includes sexually suggestive observations about women, demands for sexual special treatment, and sexually disgusting visuals in the workplace. It also covers situations where a woman is in a lower position compared to the men at her workplace and the men ask her for sexual favors while threatening to fire her; this can affect her personal and professional life negatively. The act also stressed on establishing a *Complaints Committee*. This was to be headed by the women employee. Further, it was stated that the committee should comprise an equal or greater number of women members, and no less. It also provided for third-party involvement to prevent any unjustified pressure on the complainant.

Consistent with the guidelines of the Vishaka Judgment, the GOI notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. The act provides a civil remedy in addition to other legal provisions. The act provides a comprehensive framework of the mechanism to address the problem of sexual harassment. However, certain facts need to be underlined.

- The issue of sexual harassment was considered a personal problem up to 1997 when a legal color was added to it (Vishaka Judgment). This fact illuminates the point that society was not serious about it and it was considered a natural phenomenon that exists in society.
- As per the National Crime Records Bureau report of 2015, the number of cases registered under attack on women with the aim to outrage her/their diffidence, during 2010-2015, has shown an increasing trend, as depicted in Fig. 1.
- Under the same report it has been asserted that the number of cases registered under the category of sexual harassment is maximum (51%) and other categories of crimes on women with the intent to outrage her modesty, during 2015, include stalking, voyeurism, intention to disrobe, and so on.
- A gender diversity study (Team Lease 2016) revealed that more than 72% women feel that gender discrimination exists at workplaces and that initiatives like anti-sexual harassment policies need to be boosted by the employers.

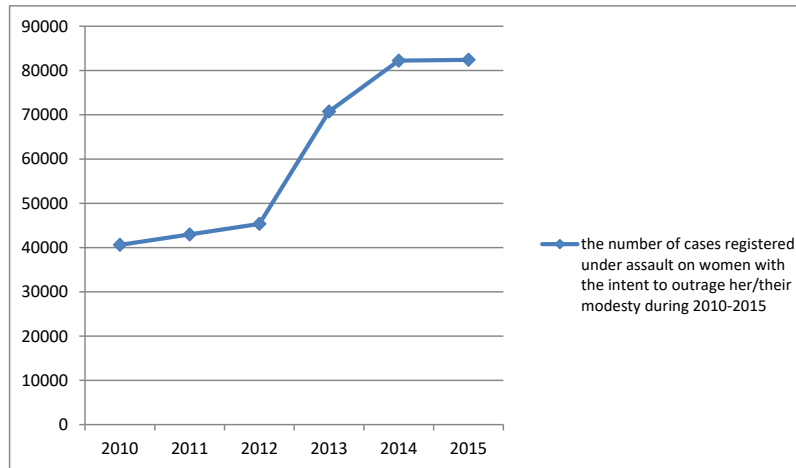


Fig. 1: National Crime Records Bureau Report of 2015

- The data from the Corporate Affairs Ministry, GOI, revealed that the complaints of sexual harassment within the top 100 companies listed on NSE doubled in the financial year 2014-2015.
- A recent survey has revealed that almost 17% of women workers in India face sexual harassment at their workplace, with incidence rates being high in both organized and unorganized sectors (Agrawal, 2012).
- The Centre for Transforming India (2010) in its report stated that women in the age group 19-45 years were harassed in one way or the other.

These facts illuminate that despite having a legal redressal mechanism in place, the figures speak volumes about how the law is followed in letter and spirit. India has witnessed a series of disheartening incidents of sexual harassment – from Bhanwari Devi to Nirbhaya, from Asifa to the rape of a dentist in 2019, who was then burnt. These are just a few names and do not signify the actual numbers, as thousands go unreported and many did/do not receive national attention. The problem runs across all sectors – private, government, semi-government, NGO, organized, and unorganized sectors of the economy.

Factors Responsible for Sexual Harassment

The reasons are subjective in nature and may vary from case to case.

However, here are a few factors that will help us to broadly understand the underlying causes of this social epidemic.

- Inherently men are considered superior to women in every sphere. The roles of men and women are clearly defined, where men are predominantly assumed to be fit for the workplace and women are assumed to be fit for the domestic domain. This attitude of considering men superior has been a part and parcel of everyday life, where women were taught to be silent, ignore the discrimination, and not take any action against it (Andrea & Eugene, 2016).
- In certain cases, sexual harassment occurs when a male is in a higher position and promises to upgrade the job profile or increase the salary of the woman employee in return for sexual favours; this is called *Quid pro Quo*, meaning *this for that* (Rouf & Anita, 2017).

Sexual harassments affects women on many levels and its sources are also manifold. However, in this paper, some sources have been identified.

Sources of Sexual Harassment

This problem has sources in all dimensions in an organization: Vertical, horizontal, diagonal. Prominently, the following positions are highlighted across many research papers.

- Supervisors
- Colleagues
- Customers
- Peer Group

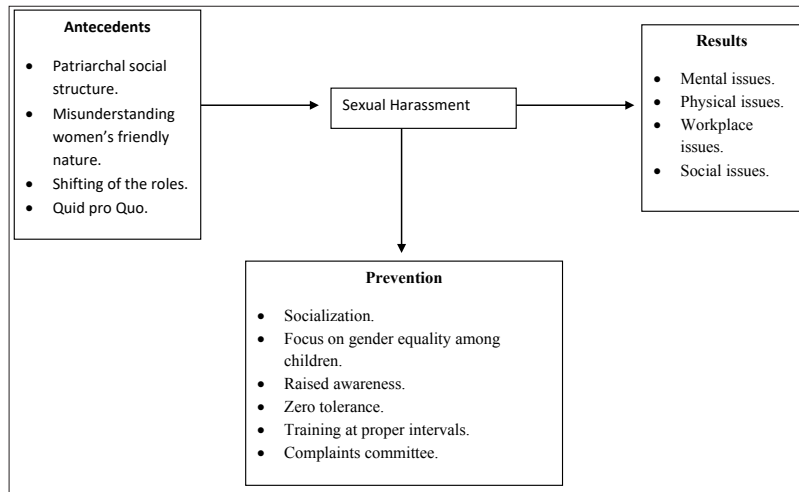
Impact of Sexual Harassment

This problem has sources in all walks of life, ranging from organization to peer groups to the people we come across in our day-to-day lives. This issue has drastic effects on the victim; broadly the effects can be classified as:

- *Mental Issues*: Which include stress, anxiety, post-traumatic stress disorder, depression, low self-worth, and so on.
- *Physical Issues*: Due to prolonged exposure to the mental issues the associated physical disorders are prevalent among the victims.
- *Workplace Issues*: The issue can have drastic effects on the productivity of the victim, which causes lower profitability of the organiza-

tion, and when assessed on a macro level leads to decreased national productivity.

- **Social Issues:** In the beginning, the woman is under suspicion, with people speculating as to why she was harassed; her relations with her family, friends, and spouse become bitter to some extent. Thus, the victim lacks adequate social support.



Source: Author

Fig. 2: Conceptual Framework of Sexual Harassment of Women

SUGGESTIONS

The issue of sexual harassment is a problem that has deep roots in the patriarchal social structure and the results borne of that have far-reaching effects on the victim. Therefore, it becomes necessary to understand the ways by which harassment can be prevented and put to an end in the future. Here are certain suggestions:

- The people should be sensitive enough to understand the issue, realize it, and take corrective actions to stop sexual harassment rather than act as bystanders.
- At the basic level, children should be raised in such a way that the doctrine of equality is induced in them, which will help them develop the habit of respecting every gender; this will eventually become a way of life.

- The comprehensive legal framework of GOI encompasses the definition of sexual harassment and its forms, the definition of an aggrieved women, preventive mechanisms, methods of prevention, and so on. However, the actual function of this can be realized when it is followed in letter and spirit, and this can happen only when there is proper awareness of the act.
- The act places a lot of responsibility on the employer to stop sexual harassment at the workplace; hence the organization must have a zero-tolerance policy against sexual harassment.
- The organization should conduct training to provide the employees a holistic understanding of the sexual harassment, and ways to identify and stop it.

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