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**Abstract**

Sexual harassment in the workplace is one of the many difficulties that employees face. It negatively affects people of both genders, though prominently females. This study will work towards extending on existing studies by taking into consideration both the male and female employees and delve into understanding the affects sexual harassment in the workplace has on their mental health and working performance of those affected. In addition, the study aims to further our understanding of the various forms of sexual harassment that occur in the workplace, and to explore both the factors that may lead to its increased occurrence and measures that could help prevent it from occurring. For this purpose, a study of literature review will be carried out. The study will provide an understanding of how sexual harassment in workplace impacts both physical and mental health of employees, and preventive measures against it. Hence, it may help in attaining knowledge that may help develop the programs against workplace sexual harassment. It believe and hope that by increasing the knowledge in this field of study would contribute towards increased awareness and development of programs that could help against workplace related sexual harassment.

**Keywords:** Sexual harassment, workplace, mental health, working performances

**Sexual Harassment of Women at Workplace**

Sexual Harassment is behavior. It is defined as an unwelcome behavior of sexual nature. Sexual harassment at workplace is a widespread problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities against women is common everywhere. It is a universal problem giving negative impact on both men and women. It is happening more with women gender in particular. How much ever one try to protect, prohibit, prevent and give remedies such violation will always take place. It is a crime against women, who are considered to be the most vulnerable section of the society. That is why they have to suffer all these immunes starting from female feticide, human trafficking, stalking, sexual abuse, sexual harassment, to the most heinous

crime Rape. It is unlawful to harass a person (an applicant or an employee) because of that person's sex.

Harassment can include "sexual harassment" or unwelcome sexual advances, request for sexual favors, and other verbal or physical harassment of a sexual nature. Sexual Harassment is unwelcome sexual behavior, which could be expected to meet a person feel offended, humiliated or intimidated. It can be physical, verbal and written.

Unwelcome Behavior is the critical word. Unwelcome does not mean "involuntary." A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomed a request for a date, sex-oriented comment, or joke depends on all the circumstances.

### **PoSH (Protection of Women from Sexual Harassment) Act, 2013**

The PoSH Act has been implemented to prevent and protect women from sexual harassment at the workplace and thereby ensure a safe working environment for women. The PoSH Act, as mandatory compliance, requires every company having more than ten employees to constitute an Internal Complaints Committee (ICC) in the prescribed manner to receive and address the complaints of any sort of sexual harassment from women in a time-bound and extremely confidential manner. The person who can file a complaint has to be a woman; the POSH Act is not gender-neutral.

### **Before the Posh Act: Vishaka vs State of Rajasthan (1997)**

Vishaka Judgment is a historical case that deals with the offence of Sexual Harassment of women at her workplace. This Supreme Court judgment defined the ambit of Sexual Harassment as including an uninvited or unwelcome sexual favour or sexual gestures from one gender towards the other gender. In the year 1992, Bhanwari Devi, employed with the rural development program of the Government of Rajasthan, was viciously gang-raped because of her efforts to stop the then prevailing practice of child marriage in support of the government's campaign against child marriage. With intent to seek revenge from Bhanwari, five men attacked Bhanwari's husband and brutally raped her. However, due to the great political/social influence of the family of the accused, the rape survivor did not get justice from the courts and the rapists were allowed to go free.

Supporting the cause of working women in India, lawyers and women's rights activists filed public interest litigation (PIL) in the Supreme Court under the banner of Vishaka. The Supreme Court, considering such grave concern, acknowledged the serious legislative shortcoming and acknowledged workplace sexual harassment as a human rights violation under the Constitution of India. "**Vishaka Guidelines**" were stipulated by the Supreme Court of India, in Vishaka and others v State of Rajasthan case in 1997, regarding sexual harassment at the workplace. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue. After the Supreme Court judgment in the case of Vishaka & vs State of Rajasthan (1997), the Ministry of Women and Child Development, after several years, passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act).

Simultaneously, the Ministry also formulated the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (PoSH Rules) effective from the same date to strengthen and streamline the provisions under the PoSH Act.

### **Provisions of the PoSH Act**

- The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaints and safeguards against false or malicious charges.
- Every employer is required to constitute an Internal Complaints Committee (ICC) at each office or branch with 10 or more employees.
- The Complaints Committees have the powers of civil courts and are required to provide for conciliation before initiating an inquiry if requested by the complainant.
- Penalties have been prescribed for employers for non-compliance with the provisions of the Act.
- The State Government will notify the District Officer in every district, who will constitute a Local Complaints Committee (LCC) to enable women in the unorganized sector or small establishments to work in an environment free of sexual harassment.

Constituting an ICC sends a powerful message that the company is completely committed to working towards women's safety. Nonetheless, it is important to note that constituting an ICC is a mandatory requirement under the PoSH Act and not abiding by the same can attract heavy fines including cancellation of license to conduct business operations.

**SHe-Box**

- The Ministry of Women & Child Development had launched Sexual Harassment electronic Box (SHe-Box) to provide single window access to every woman, irrespective of her work status, whether working in the organized or unorganized, private or public sector, to facilitate the registration of complaint related to sexual harassment.
- Any woman facing sexual harassment at the workplace can register their complaint through this portal.
- Once a complaint is submitted to the 'SHe-Box', it will be directly sent to the concerned authority having jurisdiction to take action into the matter.

**J.S. Verma Committee on sexual harassment at workplace, 2012**

The Justice JS Verma committee was set up after the Nirbhaya incident of December 2012 and submitted its recommendations on strengthening the laws to curb crimes against women.

Recommendations of the panel were:

- The Committee had recommended setting up of an employment tribunal instead of an internal complaints committee (ICC) in the Sexual Harassment at the Workplace Act.
- The committee proposed that the tribunal should not function as a civil court but may choose its procedure to deal with each complaint to ensure faster disposal of cases.
- Internal complaints could be more counterproductive as dealing with such complaints in-house could discourage women from filing complaints.
- Domestic workers should be included within the purview of the Act.
- The Committee has termed the Sexual Harassment Act unsatisfactory and not reflecting the spirit of the Vishakha guidelines framed by the Supreme Court in 1997 to curb sexual harassment at the workplace.
- The Committee said any unwelcome behaviour should be seen from the subjective perception of the complainant, thus broadening the scope of the definition of sexual harassment.
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- The panel said an employer should be held liable if
  1. he or she facilitated sexual harassment
  2. permitted an environment where sexual misconduct becomes widespread and systematic
  3. Where the employer fails to disclose the company's policy on sexual harassment and ways in which workers can file a complaint
  4. When the employer fails to forward a complaint to the tribunal
  5. The company would also be liable to pay compensation to the complainant
  6. The panel opposed penalizing women for false complaints as it can potentially nullify the objective of the law.
  7. The panel also said that the time limit of three months to file a complaint should be done away with and a complainant should not be transferred without her consent.

### **Are there any mandates at the international level against sexual harassment?**

Yes. The UN Convention on the Elimination of All Forms of Discrimination against Women also includes prevention from sexual harassment at the workplace.

### **UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was implemented in the year 1979 by the UN General Assembly which is often described as an international bill of rights for women. It enumerates what constitutes discrimination against women and also sets up a goal for national action to end such discrimination. The Convention describes discrimination against women as – “any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The Convention provides the basis for achieving equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life including the right to vote and to stand for election as well as health, education, and employment. The parties to this Convention agree to take all suitable measures, including legislation and temporary measures so that women can enjoy all their human

rights and fundamental freedoms. The Convention is the only human rights treaty that affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire change or retain their nationality and the nationality of their children. The Countries that have acceded to the Convention are legally bound to set its provisions into practice.

### **Way forward**

Sexual harassment at the workplace is a very sensitive issue and is required to be handled with the utmost care, patience, and understanding thus, the complaints must be redressed as quickly as possible to ensure a harmonious and harassment-free workplace for all employees. Hence, it is high time the Justice Verma panel recommendations are incorporated and the act is renewed.

### **Conclusion**

Due to the rising number of sexual harassment cases against employees, it is essential that this issue is investigated into thoroughly to attain a better understanding of its cause and effects. This will assist movements, programs and others who are working towards a solution. It would help reduce such activities, making the workplace a safer place where gender equality and the rights of all workers are respected and maintained.

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