

CONCEPT OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: A LEGAL PERSPECTIVE

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Abstract

The issue of sexual harassment in workplace is a complex and persistent challenge that demands a nuanced conceptual analysis. This abstract provides a succinct overview of the key aspects involved in understanding and addressing sexual harassment of women in professional settings. The analysis explores the multifaceted nature of sexual harassment, encompassing verbal, non-verbal, and physical forms of unwelcome conduct. Recognizing power dynamics as a central component, the conceptual framework delves into how hierarchical structures, gender imbalances, and workplace cultures contribute to the perpetuation of harassment. Additionally, the abstract highlights the psychological and emotional impact on victims, emphasizing the need for a comprehensive approach to prevention and redressal. Legal frameworks and organizational policies play a critical role, yet the effectiveness of these mechanisms is contingent on proactive enforcement and cultural transformation. Ultimately, a robust conceptual analysis of sexual harassment in the workplace is crucial for developing targeted interventions that foster a safe, inclusive, and respectful professional environment for all individuals.

Key words: sexual harassment, women at workplace, workplace safety, sexual harassment as human rights violation

Introduction

In workplaces around the globe, the pervasive issue of sexual harassment remains a pressing concern, challenging the very foundations of equality, professionalism, and dignity. As we navigate on the intricacies of modern professional life, unwelcome sexual advances, discriminatory behaviour and power imbalances persistently shadows the experiences of women. In this article, we embark on a thoughtful exploration, conducting a conceptual analysis of sexual harassment of women in the workplace. Our aim is to delve into the various dimensions of this complex issue, understanding its roots,

manifestations, and, most importantly, its impact on individuals and the broader professional landscape. Through this examination, we seek not only to raise awareness but also to contribute to the ongoing dialogue about creating work environments that are not only legally compliant but genuinely respectful, inclusive, and conducive to the growth and well-being of every individual.

In 1977, Professor Catherine McKinnon coined the phrase "sexual harassment in the workplace" during a study on the issue of gender discrimination. According to McKinnon's, "Sexual Harassment of Working Women," harassment may constitute a form of sexual discrimination¹. The law has been changed to identify workplace harassment as a form of gender discrimination and as an actionable wrong as a consequence of decades of battle.

Before 1997, there was no defined remedy or term for workplace harassment in India's legal system. The Indian Penal Code Section 354² and Section 509³, which deal with "outraging the modesty of a woman" and "insulting the modesty of a woman," were wide enough to include it. Employers were often unaware of the significance of the incidents because of the lack of awareness on laws. Sexual "injuries" (in the form of harassment and abuse) were not covered by the current labour laws.

The Committee under the Convention on Elimination of Discrimination Against Women in its General Recommendations state that equality in employment will be substantially undermined when women are exposed to gender-specific violence, such as sexual harassment in the workplace. According to the Committee, sexual harassment is defined as "unwanted sexually determined conduct as physical contact and approaches, sexually coloured comments, exhibiting pornography and sexual demands, whether by words or deeds. Such behaviour is frequently embarrassing and dangerous, and it is unjust when the woman has substantial reasons to think that her protest would be disadvantageous for her rights at workplace, including recruiting or promotion, or when it creates a hostile working environment." ⁴

All forms of sexual discriminations are forbidden by the Discrimination (Employment and Occupations) Convention (No. C111) by the International Labour Organization (ILO). This Convention has been ratified by India as early as on June 3rd 1960. "Any

¹ <https://www.justice.gov/crt/laws-enforced-employment-litigation-section/>

² Section 354 of IPC

³ Section 509 of IPC

⁴ CEDAW Committee, Violence Against Women,

differentiation, exclusion, or preference established on the notion of sex that affects or diminishes equal opportunity or treatment in employment or vocation" is defined as sex discrimination, according to the law. Under this Convention, India is responsible to halt, ban, and combat sexual harassment in the workplace.

Catharine Mackinnon (1979) defines "sexual harassment as the "unwanted imposition of sexual requirements within the relationship of unequal power." Kathleen Gallivan (1991) defines sexual harassment as "any sort of unwanted sexual or gender-oriented behaviour that has adverse job-related effects." "Sexual Harassment" creates a hostile or offensive environment for members of one sex and a barrier to sexual equality at the workplace. Claire Saffron describes "sexual harassment as 'sex that is one-sided, unwelcome or comes with strings attached.'"

In the words of Catherine A Mackinnon, "Sexual harassment is coercion, unwanted sex under threat or sex that is economically enforced".⁵ According to Lin Farley, "sexual harassment is best described as 'unsolicited, non-reciprocal male behaviour that asserts a woman's sex roles over her function as a worker.'" Feminists have used the term "little rapes" to characterise sexual harassment. Andrea Media and Kathleen Thompson say that the victim's self-respect and privacy are gradually eroded when she is exposed to sexual harassment.

Sexual harassment may be defined as any sexually oriented conduct that jeopardises a person's ability to succeed at her job or diminishes her feeling of self-worth.⁶ Sexual harassment may occur both physically and mentally. Milder versions may include innuendo and friendly gestures that aren't proper. In severe cases, it may lead to rape-like conduct. They may be subject to physical abuse, such as being pinched or hugged or patted or even leered at. Psychological harassment may begin with subtle indications that can develop to overt demands for dates and sexual favours and can be unrelenting in its offering of physical closeness."

Sexual harassment is an expression of male authority over women that perpetuates patriarchal structures. When women are subjected to subtle and blatant violence, it is used to remind them of their subservient position in a society where patriarchal ideals and gender norms dictate that women comply to their gender roles.

⁵ Catherine A Mackinnon, 'Sexual Harassment: The Experience' in The Criminal Justice System And Women-Offenders

⁶ Sexual Harassment in the workplace by Arjun P. Aggarwal

The word "sexual harassment" is used to describe a variety of behaviours, both verbal and nonverbal, that are used to harass or humiliate a woman in some way. It is a sort of sexual attention that may be used as a form of coercion to achieve the aggressor's desired outcome. Sexual harassment is a reflection of society's inequitable gender roles. As a consequence of socialisation patterns that adhere to a tight code of gender roles and conduct, the unequal power relationship between men and women is the outcome. Sexual harassment will encompass such incidents determined conduct by any person, whether acting alone or in collaboration with others, or by any person in authority, whether acting directly or indirectly, such as the following: as-

- (i) Eve-teasing
- (ii) Inappropriate comments
- (iii) The use of jokes that are painful or embarrassing or have the potential to be awkward or embarrassing.
- (iv) Innuendos and taunts are used.
- (v) Insults or sexist comments that are based on gender.
- (vi) Unwelcome sexual overtones in any form, including but not limited to over the phone.
- (vii) Touching and brushing against any portion of the body, as well as other similar activities;
- (viii) Incorporating pornographic or other objectionable or degrading images, cartoons, pamphlets, or sayings into one's presentation.

The use of physical force, such as touching or molestation, as well as Physical confinement against one's will, as well as any other act likely to infringe on one's privacy, including any action or conduct by or person in authority and belonging to one sex that denies or would deny equal opportunity in the pursuit of career development, or otherwise making the workplace environment hostile or intimidating to a person belonging to the other sex, solely based on sex.

SEXUAL HARASSMENT OF WOMEN–DEFINITION

Black's Law Dictionary defines 'harassment' as a term used to describe words, gestures, and actions that tend to harass another person. Sexual conduct such as words, physical contact, or the exhibition of sexually explicit materials is used to bully, intimidate, or for other similar hostile and aggressive reasons at work, and this behaviour is classified as sexual harassment.

Sexual harassment is defined as any sexually oriented activity that puts the victim's career in jeopardy, has a detrimental impact on the victim's work performance, or degrades the

victim's sense of dignity. It will manifest itself either physically or mentally. Minor and subtle forms may include verbal innuendo, improper hand gestures, and requests for dates and sexual favours, among other things. It will, however, manifest itself in apparent and unsightly ways, such as leering, physical grabbing, sexual assault, or sexual molestation. Ideally, any definition of sexual harassment would be wide enough to include both sexual conduct and behaviour as well as behaviour that is classified as sex-based behaviour.

"Disparaging comments on the role of women, their status within the labour market, or their talents and capabilities," "inaccurate judgments of work performance," "obstruction," and other forms of sex-based harassment might all be considered harassment under the law. While sexual conduct refers to any type of activity that is overtly sexual, such as unwanted touching or jokes about being a woman, sexual violence is referred to as sexual Sexual harassment is a legal and psychological problem that affects both men and women. A clear or globally recognised definition of sexual harassment does not exist at this time. It is also attempted to address the topic of sexual harassment from a variety of viewpoints, each with its own set of issues. 'Sexual Harassment,' as defined in Section 354-A of the Indian Penal Code, was amended by the Criminal Amendment Act, 2013. The following are examples of inappropriate physical contact and advances:

- A. uninvited and explicit sexual overtures;
- B. demand or request for sexual favours;
- C. demand or request for sexual favours.
- D. displaying pornographic material against the will of women;
- E. making sexist or sexually charged comments;

It is often humiliating and should be reported as a health and safety issue when any of those acts are committed in circumstances where the victim of such conduct has reasonable suspicions about her employment or work, regardless of whether she receives a salary or an honorarium or is working for free, whether in government, the public sector or private enterprise. It is discriminatory when a woman has reasonable reasons to assume that her objection would disadvantage her in her job or work, including recruiting or promotion, or when it creates a hostile work environment for her to express her opinion. If the victim refuses to agree to the activity in issue or expresses any opposition to it, the perpetrator may suffer negative repercussions. We believe that, when discussing sexual

harassment, how a woman sees action is more important than the stated purpose of the person who is doing the harassment.

Indian Perspective on Sexual Harassment

It was left to the Supreme Court to define what constitutes sexual harassment in India since there is no such standard in the country.

The Supreme Court of India, in the case of *Vishaka v. The State of Rajasthan*⁷ in 1997, defined the terms sexual harassment and sexual assault for the first time, drawing on international connections and norms, particularly general recommendation No.19 (Jan 1992) of the Committee on the Elimination of Discrimination Against Women (CEDAW), which was established by the United Nations.

The definition is virtually identical to the one established by the United Nations Commission on the Elimination of Discrimination Against Women and reads as follows:

- *“Sexual Harassment includes such unwelcome sexually determined behaviour, whether directly or by implication, as:*

- a) physical contact and advances*
- b) A demand or request for sexual favours*
- c) Sexually-coloured remarks*
- d) Showing pornography*
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

These acts are committed in circumstances where the victim of such conduct has a reasonable suspicion about the victim's employment or work, whether she is receiving a salary or honorarium or is working for free, whether she is employed by the government, a public or private enterprise, or whether she is a volunteer. Such acts can be humiliating, especially when committed by the government. It has the potential to be a health and safety hazard. For example, where a woman has reasonable reasons to think that her objection would disadvantage her in connection with her job or work, including recruitment or promotion, or when it creates a hostile work environment, it is discriminatory under the law. If the victim does not agree to the fustian activity or expresses any objections to it, it is possible that adverse repercussions may be triggered."

⁷ (1997) 6, SCC 241

Unwelcome sexual approaches and solicitations for sexual favours are examples of how discrimination is projected. Other verbal or physical conduct with sexual overtones, whether directly or by implication, was capable of being used to adversely affect the employment of the female employee and unreasonable interfering with her work performance, and had the effect of creating an intimidating or hostile working environment for her could be regarded as sexual harassment.

According to the ruling of the Mumbai High Court in *Saudi Arabian Airlines, Mumbai v. Shehnaz*⁸, a typical instance of sexual harassment may involve aspects of both quid pro quo and hostile environment in addition to the characteristics of sexual harassment. In this particular instance, a female employee of Saudi Arabian Airlines working as Secretary to the Station Manager, who was a male, was subjected to ongoing sexual harassment by the same station manager.

The labour court in Mumbai comes to the conclusion that the victim had been sexually harassed by her male officer and that she had also been punished for refusing to accede to his inappropriate sexual approaches by being dismissed from employment on the basis of false and fabricated charges. As a result, the labour court ordered the victim's reinstatement with full back pay, as well as the continuation of services and attendant benefits, among other things.

"An overall view of the case reveals that (the victim), a lady, was subjected to continuous sexual harassment by her official superior," said a single judge of the Mumbai High Court (B.M Srikrishna J.), in declining to interfere with the labour court's award and awarding costs of Rs.1000 to the victim. It is believed that the victim has been victimised because she has refused to subject herself to the sexual demands of her peak sexual potential. *Vishaka v. The State of Rajasthan*, in which the Supreme Court established the idea of "sexual harassment," would seem to be an excellent match with the actions taken by the male officer in this instance.

Upon hearing the appeal, a Division Bench of the Mumbai High Court, consisting of Justices Avneet Sawant and Rajiv J. Kochar, refused to interfere with the decision of the single judge. After deliberating for a short time, it was unanimously agreed that the male officer's behaviour constituted sexual harassment so decided in the Supreme Court's ruling in the case of *Vishaka vs. the State of Rajasthan*.

⁸ (1999) 2 LLJ 109

SEXUAL HARASSMENT OF WOMEN – KINDS

Sexual harassment can chiefly be classified into two categories:

- (i) Quid-pro-quo
- (ii) Hostile Environment Harassment.

(i) Quid-Pro-Quo

'Something in exchange for something' is a Latin idiom that literally translates as "something for nothing." In the context of sexual harassment, the term "quid-pro-quo" refers to the demand for sexual favours in exchange for a threat of negative employment repercussions if the demand is denied. This occurs when an employer requires sex as a condition of receiving a benefit at the place of employment. You may say something like, "If you sleep with me, your tasks will be completed." When an employee's acquiescence to unwanted sexual activity is made an explicit condition of employment, or when personal actions such as promotion and transfer decisions are made based on an employee's reaction to such behaviour, this is known as sexual harassment.

"Quid-pro-quo sexual harassment," is a kind of harassment involves making of sexual demands while threatening to terminate one's employment if the demands are not met. The second criterion implies that the culprit must be in a position to cause the woman to lose her work, which is implied in the first. The following are some specific instances of Quid-pro-quo sexual harassment: -

1. Requiring employees to submit to a supervisor's request for sexual favours as a condition of ongoing employment is prohibited.
2. Provide particular employment incentives in return for sexual favours, such as a raise in pay or a promotion.
3. Withholding employment advantages, such as a pay raise or promotion, or assigning more difficult responsibilities to an employee who has refused a supervisor's request for sexual favours is also prohibited under the law. Of course, in this context, a refusal to accept a job candidate or an abrupt termination of employment would be grounds for legal action.

(ii) Hostile Environment Harassment

This is a work environment in which an employer (either a supervisor or a coworker) acts or says things to her that are unpleasant and disrespectful. Individual sexual harassment does not have to consist only of a demand for an exchange of sex in return for a work perk to be considered harassment. Creating an unpleasant atmosphere is what it is all

about. If two workers are swapping sexual jokes and both of them are laughing, it is possible that they are not engaging in sexual harassment. It might be considered sexual harassment, however, if one of the two parties wishes to end their relationship and the other party takes advantage of the unequal relative terms and circumstances of workplace employment to extend the connection. Even if the employee does not expressly request that the inappropriate behaviour cease, the behaviour may be considered undesirable. This kind of work atmosphere may hurt an employee's ability to function. The decision of whether certain conduct constitutes sexual harassment is based on the unique circumstances of the situation, the substance of the situation, and the extent to which the person has been impacted by it. Sexual harassment may occur between coworkers of the same or opposite sexes, as well as between an employee and his or her customer. It might take the form of something tangible, something visual, or something verbal. Sexual harassment may manifest itself in a variety of ways, including but not limited to some of the behaviours listed below:

- (i) It is possible that unwanted sexual harassment is said to be directed towards a specific person, persons, or group of people if the acts are committed by a male to female, female to male, and between or among people who are of the same sexual orientation who are sexual in nature.
- (ii) The use of nonverbal behaviour that is sexual in nature and undesirable, such as staring, leering, and vulgar gestures, are examples.
- (iii) Verbal activity is sexual in character and is unwanted in most situations. For example, epithets, jokes, insults, slurs, and persistent invitations for dates are all considered inappropriate behaviour.
- (iv) Assaults, sexual approaches such as groping, patting, pinching, restricting or obstructing movement, or any physical interference with ordinary work or movement are all examples of sexually explicit behaviour that is undesirable.
- (v) The visual arts, such as posters or signs, letters, poetry, graffiti, cartoons or drawings; photographs; calendars; e-mail; and computer programmers are all examples of sexual imagery.

Sexual Harassment as Human Rights Violation

As a starting point, consider how women have been regarded as second-class human beings by a male-dominated society for generations. Another contributing element is the centuries-old belief that women are only meant to be enjoyed by males and that they were made to serve those who do. The social structure, which includes conventions, is also in

the woman's advantage in this situation. Women are equally at blame for the issue since they do not band together and help the female victim when she is in need. Many factors contribute to the persistence of the problem, including deteriorating moral standards, deteriorating law and order situation, unwillingness to be a witness against such an incident, short life spans that leave victims with insufficient time to bring legal action, and unemployment that encourages victims to remain silent against harassment because hunger is more painful than the harassments. Another essential element to consider is the inactivity of the police or other authorities. Finally, examples that have been documented have been compromised as a result of political, social, bureaucratic, and familial influences, resulting in the eventual demise of a glimmer of hope. Number of reported occurrences of sexual harassment of women at work is dangerously growing as a result of a variety of variables, including:

- (1) an increase in the number of working women.
- (2) A lack of understanding of human interactions and values.
- (3) A rapid decline in the social and moral norms of the general public.
- (4) A dysfunctional and filthy family environment.
- (5) There are more discussions about feminism and masculinity than there are about humanism.
- (6) People have a poor understanding of what is wrong and what is right.
- (7) The society's perspective on law and order is poor.
- (8) There are insufficient legal provisions to deal with the matter effectively.

Causes for the menace of Sexual Harassment

The following are various causes for the menace of sexual harassment.

Dominance by men

The sexual favours given to female subordinates by authoritarian men, or men in authority may be easily understood as a kind of public view of this sort of masculine conduct. It's not about sex but about misogyny in the workplace. Even though sexual impulses are often cited as a motivating factor for harassing others, the reality is that it is more about preserving one's job than gratifying one's sexual appetite. Female workers are subjected to a great deal of workplace harassment that isn't sexual in substance or intent but rather aims to demonstrate the dominance of males. And it is through this sort of

conduct that the gender gap is established and the authority of men over labour is asserted.⁹

Inferior job position

Sexual harassment is a tactic used by those in positions of authority to exert control over others who are weaker than they are. According to research, women are more likely to face harassment when they rise through the ranks of an organisation or go into previously uncharted territory. People with less power are more likely than those with more authority to pay attention to what those people are saying or doing. This reveals that those in lower positions in an organisation or an educational institution are more likely to be sexually harassed than those who hold positions of authority.¹⁰

Aggressive Masculine Trait of Male Gender

Harassment may occur in a variety of settings, from the workplace to the family to the classroom, according to various studies. The fear of losing one's position of power or control is thought to be the root cause of sexual harassment, which is attributed to men's strong competition and ego worries. It's not something they want to show off to other guys because they don't want to look weak or pathetic. As a way of demonstrating their power, they harass their female co-workers. In this context, it is apparent that sexual harassment is a result of men's aggression against women.

Misperception about the Friendly Nature of Women

It is very uncommon for male coworkers to start harassing their female colleagues, even if they are nice to begin with. If we ask for sexual favours from them, they believe they are sober and would happily oblige. As it turned out, it wasn't what women themselves said they wanted to be. The result is that sociable women are seen as having a sexual desire by males. In the workplace or in general, a woman's cordial demeanour with male coworkers becomes the source of sexual harassment.

Higher Academic Profile and Lesser Job Opportunity

Our modern culture is aware of the vast number of women with advanced degrees looking for work, but the number of open positions is smaller than the number of these highly educated young women. If a person in charge of an organisation harasses and advances these brilliant and efficient women when they begin their search for a job, they are

⁹ J. I. Kalyar, "Sexual Harassment Against Women in India: An Overview", International Multidisciplinary Research Journal, Vol.2, Issue II, 2015

¹⁰ S. G. Baugh, "On the Persistence of Sexual Harassment in the Workplace", Journal of Business Ethics, Vol. 16, No. 9, Women in Corporate Management, pp.899-908, 1997

ensured that they will be given a position. 'Quid Pro Quo' is a result of this conduct by men in higher positions in a company (Tit for tat). These females are commonly solicited for sexual offers for promotion, pay increases, and other work requirements when tied to a certain job role inside a company. One of the main reasons for the sexual harassment of young educated women in our current culture is undoubtedly this. In light of the above-mentioned factors, it is apparent that women in both the private and public sectors are used to being humiliated by their male colleagues, despite several legal and constitutional protections for their modesty and dignity at work.

Reluctant private sector

Working in the private sector has made it difficult for victims to come forward and report cases of sexual harassment, which is why it is so rare. Vishaka guidelines have been the subject of several complaints about their poor implementation. The problem of sexual harassment has been largely ignored in India, according to business and academic leaders. Because of societal taboos connected with sexual harassment and lengthy legal delays, they acknowledge that the rules have never been effectively applied. As a whole, Indian firms have a poor understanding of the specific mechanisms in place to combat sexual harassment. Multinational corporations, on the other hand, seem to exploit the void caused by a lack of legislation.

For a woman who has been sexually harassed, challenging an employer is daunting and nearly impossible because of the significant expense it takes in terms of time, energy, and resolve. Transnational corporations with enormous resources are a threat to women because they have to deal with bureaucratic hurdles from the police and the courts, as well as obstinate employer. Organizations are seen by women's rights advocates as a threat to their public image rather than a violation of an individual's right to dignity and safety, which leads to the suppression of such accusations.

Organizations in the private sector should model their anti-harassment measures after public ones. Adherence to recommendations and monitoring of their implementation by government agencies and industry confederations are the next steps. For private sector businesses to properly explain their viewpoint, they must enforce their code of conduct to prevent and resolve sexual harassment in the workplace and have a transparent redressal procedure in place.

Conclusion

In conclusion, the exploration into the conceptual analysis of sexual harassment underscores the urgent need for a paradigm shift in our approach to workplace dynamics. The intricacies unveiled throughout this essay reveal a persistent issue that transcends mere legal compliance, delving into the very fabric of societal norms and power structures. As we reflect on the multifaceted dimensions of sexual harassment, it becomes evident that addressing this challenge necessitates a holistic strategy that goes beyond punitive measures.

To truly combat sexual harassment, we must cultivate workplaces where respect, equality, and inclusivity are not just ideals but embedded principles guiding everyday interactions. It is incumbent upon us, as individuals and as a society, to challenge and dismantle the deep-seated cultural and organizational factors that perpetuate such misconduct.

Furthermore, the emotional and psychological toll on victims cannot be overstated. It is imperative that we foster environments that not only discourage harassment but also provide robust support mechanisms for survivors, allowing them to reclaim agency over their professional and personal lives.

In this collective endeavor for change, education, awareness, and a commitment to fostering respectful workplace cultures become paramount. Organizations, policymakers, and individuals alike must work collaboratively to redefine power dynamics, eliminate gender-based discrimination, and create an environment where everyone can thrive without fear.

As we move forward, let us carry the insights gained from this conceptual analysis into our professional spheres, advocating for workplaces that champion the principles of respect, equity, and dignity. By doing so, we contribute to a broader societal transformation, envisioning a future where the scourge of sexual harassment becomes a relic of the past, and every individual can pursue their professional aspirations unencumbered by fear or discrimination.
