

SEXUAL HARASSMENT: A SHORT HISTORICAL STUDY

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Abstract

During the absence of legislature to protect women against sexual harassment at workplace supreme court of India give guideline in the Vishaka v. State of Rajasthan in 1997. The guidelines defined sexual harassment and Supreme Court stated to imposed compulsory duty on the employer to make a complaint mechanism to initiate criminal action against the offender, take certain preventive measures or create awareness among the workers about the guidelines, and protect women against the act who commits against them. The final bill relating to sexual harassment of women at workplace was introduced in the lok sabha, being the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Bill, 2012. This bill was passes by parliament on 3rd September, 2012 and receives the assent of the President of India on 22nd April, 2013. The 2013 Act came into force only on 9th December, 2013. The researcher has focused upon the history of sexual harassment and development in India.

Introduction

Sexual harassment is a social practice. Social practices have lives, institutional lives and semiotic lives.¹ Regardless of both national and international efforts to take out sexual harassment, there is no single meaning of what constitutes prohibited behaviour. Sexual harassment² is a very wide area which includes many types of unwanted sexually behaviour.

¹ Reva B. Siegel, "A Short History of Sexual Harassment" (2003) P1.

² The EEOC has defined sexual harassment in its guidelines as: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or Submission to or rejection of such

By and large, international instruments characterize sexual harassment comprehensively as a type of violation against women and as discriminatory treatment, while national laws concentrate all the more nearly on the illegal conduct. All definitions, in any case, are in focused that the prohibited behaviour is unwanted and causes harm to the victim.³ At the international level UN define sexual harassment as such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.⁴ The definition of sexual harassment in CEDAW includes all types of sexually behaviour whether physically or mentally which are unwelcome and which affects the dignity of women. The International Labour Organization (hereinafter ILO) committee of experts has also define that sexual harassment is a form of sex discrimination.⁵ The ILO policy convention defines Sexual harassment at the work place as “any unwanted conduct of a sexual nature, which in the reasonable perception of the recipient creates an intimidating, hostile or offensive working environment. It is particularly serious when behaviour of this kind is engaged in by any official male or female, who is in a position to influence the career or employment conditions (including recruitment, assignment, contract renewal, performance appraisal or promotion) of the recipient of such behaviour.”⁶ So sexual harassment include

conduct by an individual is used as a basis for employment decisions affecting such individual, or Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. ILO and CEDAW also defined sexual harassment. Also read of section 354A, 509 of IPC and section 2(n) of sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013.

³ Available at <<https://www1.umn.edu/humamrts/svaw/harassment/explore/1whatish.htm>> (visited on May23, 2016).

⁴ [Convention on the Elimination of all Forms of Discrimination Against Women](http://www.ohchr.org/Documents/professional/eliminationvaw.pdf), (December20, 1993) available at www.ohchr.org/Documents/professional/eliminationvaw.pdf (May 23, 2016).

⁵ C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

⁶ What is sexual harassment, Available at <<http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>> (Visited on 24/05/2016).

uninvited and offensive touching, especially the complainant's breasts and other part of body in a sexual manner, commenting on the complainant with reference to nude picture of women and her clothes and under garments, peeping under her skirts, unzipping trousers and showing himself to the complainant, videotaping the complainant while she is dressing and undressing and many other acts and talk which violation of some ones freedom and dignity.

Sexual Harassment: Historical Development

Sexual harassment developed out of dissident concerns and exchange union work on women's equity and has a tendency to be characterized as far as rehashed and combined episodes situated in the work place. Reactions have been essentially through institutional strategy and anti-discrimination provision. It has turned out to be progressively isolated from different types of women misuse through its area in faculty and livelihood outline works. Female genital mutilation was brought as an issue up in the mid 1970's by white western women's activists and keeps on being tended to by African women. The area of inappropriate behavior as an occupation issue was established by Mackinnon's ground breaking work.

Sexual harassment: Before 1970

Before 1970's the word sexual harassment was not being used. Nobody use the word sexual harassment for any such offences relating to women. In any case, conduct of that sort, later came to be named sexual harassment. Proof for the presence of this conduct is found in records, stories, articles and books about women and work, and in addition in lawful records. A few researchers have started to look at sexual harassment for occurrences of the sorts of practices that are presently being called sexual harassment.⁷ Sexual harassment in associations has a long past however a short history. It is reported in historical records. Since the appearance of the Industrial transformation drove expansive quantities of women to work outside the home, it has just recently been perceived as an important social issue. As of late, the effect of sexual harassment has turned out to be progressively well documented.

⁷ The best sources for such material are; The sexual harassment of women on the job, MC Graw Hill 1978 New York; Catharine A Mackinnon-sexual Harassment of working women.

Associations have been stood up to with new issues of corporate moral obligation, lawful risk, hierarchical efficiency and employee prosperity. For quite a bit of US history, women who worked for wages as domestic servants, worker of factory, or shop young girls were associated with being sexually unsavory. Due to the ignominy credited to working women, on the off chance that one of them has gotten to be pregnant by a manager or expert, her free ethics were faulted, and compulsion was not normally suspected.⁸ A researcher who inspected court records of rape in England somewhere around 1700 and 1799 found that 29% of assault cases in London included master and servants.⁹ The exact predominance of coercive sexual conduct is hard to decide, however some of the individual records of working women studies proposes that such conduct was genuinely normal in some employment arrangements.¹⁰ Women who worked in factories in England were subjected to sexual unwelcome behavior by their chiefs and employers.¹¹ Women who worked in processing

⁸ Margaret A. Crouch, *“Thinking about Sexual Harassment”* 25-27 (Oxford university press, 2001).

⁹ Anna Clark, *“Women’s Silence, Men’s Violence”* 40-41 (London: Pandora, 1987).

¹⁰ See, for example, stories related by Helen Campbell in *Prisoners of poverty: Women Wage-Workers, Their Trades and Their Lives* (1887: reprint, New York: Garrett Press, 1970). “The foreman she hated made everything as difficult as possible. Though the bundle came ready from the cutting-room, he had managed more than once to slip out some essential piece, and thus lessened her week’s wages, no price being paid where a garment was returned unfinished. He had often done this where girls had refused his advances, yet it was impossible to make complaint. The great house of Canal Street left these matters entirely with him, and regarded complaint as mere blackmailing” (Campbell, “Prisoners”97).

¹¹ See, for example, Amy A. Bully and Margaret Whitley, *“Women’s Work”* (London: Methuen, 1894). “But perhaps the question which touches women more closely is the nature of supervision to which they are subjected. Unhappily this has sometimes been used for the purpose of driving the workpeople- for instance, by exposing the name of those who had fallen below the standard of the Labour drive in the shed-but immoral conduct has had to be submitted to. However, the unions have taken a firm attitude in this latter respect, and indeed two strikes have recently taken place, one at obnoxious overlooker was removed. In the Nelson case the evidence was submitted to arbitrator, clergymen of the neighborhood, who, in giving their judgement, placed it on record that the offences of which the man had been judged guilty ‘are not uncommon among men who have the oversight of the female operatives in other mills, and as ministers of religion we most earnestly appeals to the employers of Labour practically to recognize their duty in this matter, and seriously consider how essential it is to the happiness and well-being of those under their charge, as well as to their credit, to make the moral conduct of their work-people the subject of nearer concern and of greater importance.’ It is satisfactory to note

plants in Canada were irritated by their bosses. In April 1890, the Canadian Federal Government brought into the House of Commons an amendment to the criminal law to make it a criminal offense for a man who had a female worker in his production line to entice her or to utilize the power that his position offered him to shock her virtue.¹² The historical proof recommends that the various cases of economic power by managers to get sexual access to their employee is not new, but rather it was not lime lit. Absence of information about sexual harassment made the issue not to define these things as a problem. Women did not have the knowledge about sexual harassment and they did not know that these misconducts are violating their right.

Sexual Harassment: after 1970's

At this point we are all introduced with sexual harassment all through the work place. Sexual harassment is an all-inclusive issue and has gotten the consideration world over. The awareness has expanded in light of women' rights developments, expansion of women population at work places, improvement in women' training also, appropriation of Convention on Elimination of all types of Discrimination against women by UNO etc.

The formation of the concept of Sexual Harassment

The word sexual harassment instituted in 1970's by women's feminist activists, and their origination of sexual harassment was socio-cultural. Linfarely claims to have found the Phenomenon of sexual harassment¹³. Farley addressed numerous working women and found that this example was far reaching. She doesn't say just where the term sexual harassment originated from. Just that the male conduct inevitably required a name and sexual harassment appeared to come to fruition as close to symbolizing the issue as the language would permit¹⁴.

that this award has created as improvement in the behaviour of overseers generally, and has attracted the attention of employers" (Bully and Whitley, "Women's Work", 99-100).

¹² Backhouse and Cohen, "Sexual Harassment on the Job" 61.

¹³ Lin Farley, "*Sexual Shakedown: The Sexual Harassment of Women on the Job*" XI (McGraw-Hill, 1st Edition, Oct, 1978).

¹⁴ Lin Farley, "*Sexual Shakedown: The Sexual Harassment of Women on the Job*" X (McGraw-Hill, 1st Edition, Oct, 1978).

Acknowledgment of the issue prompted the development of working women joined in 1975 to address the issue they named sexual harassment.¹⁵ In 1975 US Congress senate Committee on Labor and Human Resources expressed at the foundation's arrangement that, it authored the saying "sexual harassment" and gave a name to an once in the past taboo dilemma faced by a large number of working women.¹⁶ Mackinnon credits "working women united institute" with being the first to utilize the word "sexual harassment" as a term of act. Working women united institute appears to have been the first to utilize these words first regarding the instance of Carmita wood in October 1975.¹⁷ The primary definition of sexual harassment was detailed by Farley and working women united. To find the pervasiveness of sexual harassment, they appropriated the main survey ever committed exclusively to the point of sexual harassment in May 1975. The definition of sexual harassment utilized as a part of the study was:

“Any repeated and unwanted sexual comments, looks, suggestions or physical contact that you find objectionable or offensive and causes you is comfort on your job”.¹⁸

This definition is almost proportional to current lawful meanings of sexual harassment. Farley considers sexual harassment as a far reaching example of conduct that to some part clarifies, and to some part is clarified by male supremacy. Men force sexual harassment on women with regards to work since they are in a position to do as such, and in light of the fact that it keeps up their position of seniority in the work place.

Catharine Mackinnon's sexual harassment of working women, distributed in 1979, was a noteworthy impact in the development of the social and lawful significance of sexual harassment. Catharine Mackinnon was one of the primary researchers to estimate the

¹⁵ Lin Farley, “*Sexual Shakedown: The Sexual Harassment of Women on the Job*” X (McGraw-Hill, 1st Edition, Oct, 1978).

¹⁶ U.S. Congress Senate Committee on Labor and Human Resources, “Sex Discrimination in the Work-place: Hearing before the Committee on Labor and Human Resources” 517 (97th Cong., 1st sess...1981).

¹⁷ Margaret A. Crouch, “*Thinking about Sexual Harassment: A Guide for the Perplexed*” 35-36 (Oxford University Press New York, 2001).

¹⁸ Lin Farley, “*Sexual Shakedown: The Sexual Harassment of Women on the Job*” XI (McGraw-Hill, 1st Edition, Oct, 1978).

unfavorable conditions that such a large number of women had encountered; Mackinnon characterizes sexual harassment as takes after:

“Sexual harassment most broadly defined, refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power. Central to the concept is use of power derived from one social sphere to lever benefits or imposes deprivations in another”.¹⁹

Mackinnon's definition offers with Farley's study definition the component of 'unwantedness'. It likewise conveys to the toll the imbalance of force is clear in Farley's reasonable definition. Until, the mid-seventies sexual harassment was not perceived by law in United States. It was just in 1980 that the EEOC distributed an arrangement of rules identifying harassment and threatening environment as harassment.²⁰ In 1986, U.S. Supreme Court ruled firstly that sexual harassment constituted an infringement of 1964 Civil Rights Act.²¹

Essentially it was just in 1991 that the European Community embraced another code of routine of the Protection of Dignity of Women and Men at work. Spain furthermore, France have made sexual harassment a criminal offense, yet new laws are vague. England and Ireland excessively perceived sexual harassment in legal terms as it were in 1991.²²

Development of Sexual Harassment in India

In India, sexual harassment of women has not been articulated as a juridical classification of crime in Criminal law. It was just in 1997 where the sexual harassment defined as a crime in Indian Penal Code (hereinafter IPC).²³ This doesn't suggest that there are no related laws in

¹⁹ Catharine A. MacKinnon, “Sexual Harassment of Working Women” 48(1) *UCLR* (1981) 183-200P.

²⁰ Dr. Swarana Lata Sharma, “*Gender Discrimination and Human Rights*” 154 (Kk Publications New Delhi, 2000).

²¹ “*Business week*” (18th march 1991)

²² “*Women challenges to the year 2000*”; 72-73).

²³ Indian Penal Code, 1860, section 354A reads, “Sexual Harassment and punishment for Sexual Harassment- 1.A man commits any of the following acts— i. physical contact and advances involving unwelcome and explicit sexual overtures; or ii. a demand or request for sexual favours; or iii. Showing pornography against the will of a woman; or iv. Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

the Indian Penal Code that might be evoked when a woman is sexually harassed. In Indian penal code some laws are defined about any such act which affects the modesty of women but the term sexual harassment was not defined. Be that as it may, related laws are encircled as offenses that either adds up to foulness out in the open or acts that are seen to disregard the modesty of women under sections 294, 354 and 509 of IPC. An analysis of the crime in India reports uncovers that up to 1991 the order of offenses, for example, homicide, murder and cheating did not archive particular crime against women separated from rape and kidnapping. The laws related to sexual harassment, areas 354 and 509 were subsumed under the classification of 'other IPC crime'. Subsequently the insights were not created independently in the nonappearance of such a classificatory grid²⁴, there by showing that harassment of women was not yet saw as a serious crime in nature. In 1992, be that as it may, a part on 'crimes against women' was added to the crime in India report to adapt to the constant interest for information on the smoldering issue of violations against women. The report further expressed: violations against women have turned into a matter of developing concern. We are perceiving women' rights progressively and guaranteeing their due status. The confirmation is all over. The voices of women are progressively being heard in the parliament what's more, in the public.²⁵ Along these lines in 1992 the semantic classification of violations against women was authored what's more, another arrangement of classificatory practices operationalized to produce information to adapt with the requests hurled by difficulties from the women' status talks. This movement was huge in that it recognized general guiltiness from violations particularly against women that abuse their rights. This new classification was presently to go about as a record of the status of women.²⁶ The report recorded the

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2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (I) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
 3. Any man who commits the offence specified in clause (iv) of sub-section (I) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”.

²⁴ Shobna Saxena, “*Crimes against women and protective laws*” 225 (1995).

²⁵ Pratiksha Baxi, “Sexual Harassment”, seminar 505 (September 2001) p.1-11 available at http://www.undp.org/content/dam/india/docs/sexual_harassment.pdf (visited on 04/06/2016).

²⁶ Pratiksha Baxi, “Sexual Harassment”, seminar 505 (September 2001) p.1-11 available at http://www.undp.org/content/dam/india/docs/sexual_harassment.pdf (visited on 04/06/2016).

accompanying violations against women as articulated in the IPC. Rape (376 IPC): kidnapping and abduction for various purposes (363-373) homicide for dowry, dowry death and their attempts (302/304-B. IPC) torture, both mental and physical (498.A IPC): molestation (354, IPC): and eve teasing (509.IPC). The report arranged 354 as molestation and section 509 as eve teasing. Molestation then was perused against those offenses that utilization compels or strikes to shock the humility of women. Eve teasing was perceived as a well-known type of harassment of women openly place.²⁷ As sexual harassment became very big problem for women specially women those worked at workplaces so there have been various crusades and legal interventions against sexual harassment, most suggesting change of the law. So the first judgment of Supreme Court came related to sexual harassment at workplace in 1997.²⁸ The Judgment of Supreme Court in 1997 has been an imperative legal event, making the legal activism in the coliseum of gender justice. The Judgment of Supreme Court perceived sexual harassment at work place and give guidelines for the prevention, deterrence and redressal of sexual harassment.

Behaviour that amounts Sexual Harassment

Sexual harassment is unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances. Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing;
- staring or leering;
- suggestive comments or jokes;
- sexually explicit pictures, screen savers or posters;
- unwanted invitations to go out on dates or requests for sex;
- intrusive questions about an employee's private life or body;
- unnecessary familiarity;
- insults or taunts based on your sex;

²⁷ Pratiksha Baxi, "Sexual Harassment", seminar 505 (September 2001) p.5 available at http://www.undp.org/content/dam/india/docs/sexual_harassment.pdf (visited on 04/06/2016).

²⁸ *Vishaka and others v. State of Rajasthan and others*, (1997) SCC 3011.

- sexually explicit emails or SMS messages;
- accessing sexually explicit internet sites;
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.²⁹

So we can say that Sexual behaviour might be viewed as sexual harassment when a man gets himself personally, hostile sexually. Such conduct might be inconspicuous or self-evident, verbal or non-verbal its extension may cover an extensive variety of conduct that runs the array from tapping women' bottoms, when they work down in lobby or workplaces, to squeezing, to rehased persistent arms around the shoulder, framed in amicability, the inquiries concerning the ladies sex the distance to the express suggestion that oblige women to take part in sexual relationship and also include uninvited and offensive touching, especially the complainant's breasts and other part of body in a sexual manner, commenting on the complainant with reference to nude picture of women and her clothes and under garments, peeping under her skirts, unzipping trousers and showing himself to the complainant, videotaping the complainant while she is dressing and undressing and many other acts and talk which violation of some ones freedom and dignity. These things have completely decrease confidence of girls and women.

Be that as it may, sexual harassment should be possible in both the ways, physically and mentally. In its refined structure, it might be restricted to verbal and in proper affectional signals and in compelling conduct, the sexual harassment adding up to attempted actual rape. The following may be amounts sexual behaviour:

1) Verbal Sexual behaviour

The verbal sexual behaviour includes any comments which are based on sexual nature about any women's size figure, shape, body, weight, and unwelcome remark, rough and vulgar

²⁹ Sexual harassment- a code in practice (Australian Human Rights Commission), Available at <https://www.humanrights.gov.au/publications/sexual-harassment-code-practice-what-sexual-harassment> (visited on 05/06/2016).

jokes. If any person comments which are unwelcome and sexually in nature includes verbal sexual behaviour. If anyone is insulting publically saying something demanding and humiliating. Graphic sexual descriptions, chatter of sexual nature and telephone calls with sexual tones are also including in verbal sexual behaviour. Teasing to anyone and using her name such as darling, honey, and sweet heart are also including verbal sexual behaviour. US court held that if any person calling others as 'Monica' amounts to sexual harassment.³⁰

2) Non-Verbal Sexual behaviour

Gestures are the development of the body, head, arms, hand, fingers, figures, face and eye that are looks of a thought, an opinion, an insight or a feeling. The taking after may constitute sexual harassment- Licking lips or teeth, holding or eating nourishment provocatively. Sexual looks, for example, scoffing and calling with sexual tones. Obscene composed materials, for example, letters, email, notes, solicitations, Looking a person up and down (Elevator eyes), Staring at someone , Blocking a person's path, Following the person, Giving personal gifts, Displaying sexually suggestive visuals, Making sexual gestures with hands or through body movements, Making facial expressions such as winking, throwing kisses, or licking lips.³¹

3) Visual and physical Sexual Harassment

Visual sexual harassment includes showing pornography, pictures those are sexually in nature or send any message which are sexually in nature and include any sexually pictures. If such person show to anyone such types of cartoons which are sexually in nature are also including visual sexual harassment. Physical sexual harassment includes actual physical attempt for kissing, embracing, patting, squeezing breast and cheeks and other physical attempt.

4) Psychological Sexual Harassment

³⁰ Types of Workplace Harassment: Verbal, Nonverbal, Physical & Visual, Available at <<http://study.com/academy/lesson/verbal-harassment-in-the-workplace-definition-examples.html>> (visited on 05/06/2016).

³¹ What is sexual harassment, Available at <<http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>> (Visited on 05/06/2016).

This incorporates calling each day for work and hold her for over the top hours, also, gazing all over, bosom, neck, eye and other part of the body; rehashed undesirable welcome for supper, beverages and films, proposition for physical closeness starting with unobtrusive insights which may prompt obvious solicitation for dates or sexual intercourse, sexual support, requiring to wear sexiest and uncovering or suggestive saree, suit, dress and to embrace suggestive haircut, lipstick and so on.

Definition of Sexual Harassment

Sexual harassment as defined in the landmark case of *Vishaka v. State of Rajasthan*,³² in this case Supreme Court defined sexual harassment as follows:

"Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) as:

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

Where any of these things are submitted in circumstances under which the casualty of such direct has sensible fear that in connection to the casualty's livelihood or work (whether she is drawing pay, or honorarium or willful administration, whether in government, open or private venture), such lead can be embarrassing and may constitute a wellbeing and security issue, it adds up to sexual harassment at workplace. It is oppressive, for occasion, when the woman has sensible grounds to trust that her complaint would disservice her regarding her job or work (counting selecting or advancement), or when it makes a threatening workplace. Unfriendly outcomes may be gone to if the casualty does not agree to the behavior being referred to or raises nature any protest thereto.

³² *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

In *Apparel Export v. A.K. Chopra*, the Supreme Court defined, “sexual harassment” as “any action or gesture [that], whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee.”³³

The ILO policy convention defines Sexual harassment at the work place as “any unwanted conduct of a sexual nature, which in the reasonable perception of the recipient creates an intimidating, hostile or offensive working environment. It is particularly serious when behaviour of this kind is engaged in by any official male or female, who is in a position to influence the career or employment conditions (including recruitment, assignment, contract renewal, performance appraisal or promotion) of the recipient of such behaviour”.³⁴

Sexual harassment takes place if a person:

- i. Subjects another person to an unwelcome act of physical intimacy, like grabbing, brushing, touching, pinching, actual physical attempt for kissing, embracing, patting etc.
- ii. Make an unwelcome demand or request for sexual favours from another person, and further make it a condition for employment/payment of wages/increment/promotion, etc.
- iii. Makes an unwelcome remark with sexual connotation, like sexually explicit compliments/ cracking loud jokes with sexual connotation/ making sexist remark, etc.
- iv. Engages in any other unwelcome conduct of sexual nature, with could be verbal or non-verbal, like starting to make the other person uncomfortable, making offensive gesture, kissing sound, etc.³⁵

It is sexual harassment if a supervisor request sexual favour from a junior in return for promotion or other benefits or threatens to sake for non-cooperation. It is also sexual harassment for a boss to make intrusive inquiries into the private lives of employees, or persistently ask them out. It is sexual harassment for a group of workers to joke and snigger

³³ *Apparel Export Promotion Council v. A.K. Chopra*, (1999)1 SCC 759.

³⁴ What is sexual harassment, Available at <<http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>> (Visited on 05/06/2016).

³⁵ Prof. (Dr.) Kamaljeet Singh and Vikram Singh, “The Sexual Harassment of Women at Workplace (Preventive, Prohibition and Redressal) Act, 2013: A Bane or Boon” 49(4) CMLJ (2013): J310-J325P.

amongst themselves about sexual conduct in an attempt to humiliate or embarrass another person.³⁶

So we can say that Workplace Sexual Harassment is behaviour that is Unwelcome, Sexual in nature, a Subjective experience and Impact not intent is what matters often occurs in a matrix of power.

Unwelcome Behaviour- Unwelcome behaviors³⁷ are those act which are not giving pleasure to the mind or senses³⁸. So we can say that when any behaviour which is bad in nature and cannot accept by anyone are unwelcome Acts. It is very critical to recognize and differentiate between welcome and unwelcome behaviour. We can understand it with the following examples.³⁹

| Unwelcome | Welcome |
|-----------------|------------|
| Feels bad | Feels good |
| One-sided | Reciprocal |
| Feels powerless | In-control |
| Power-based | Equality |
| Unwanted | Wanted |
| Illegal | Legal |

³⁶ <http://www.indiatogether.org/combatlaw/vol2/issue3/harass.htm> (Visited on 06/06/2016)

³⁷ What is sexual harassment, 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 circumstance. Available at <<http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>> (Visited on 06/06/2016).

³⁸ See <<http://www.merriam-webster.com/thesaurus/unwelcome>>.

³⁹ Government of India Ministry of Women and Child Development, "Handbook on Sexual Harassment of Women at Workplace" (November, 2015).

| | |
|-----------------------------|----------------------|
| Invading | Open |
| Demeaning | Appreciative |
| Causes anger/sadness | Happy |
| Causes negative self-esteem | Positive self-esteem |

There are two types of sexual harassment. Firstly Quid Pro Quo which literally mean is ‘this for that’ and it include implied and express promise of preference treatment in employment. Secondly Hostile Work Environment, it includes creating a hostile, intimidating or an offensive work environment.⁴⁰

Quid Pro Quo

The key elements of quid pro quo sexual harassment⁴¹ are: firstly, there must be a demand of sexual favour and secondly, if such person refused demand then the threat of adverse job consequences. It is implicit in the second element that the perpetrator must be in a position to create adverse job consequences for a woman. Finally such person is in a position of authority over the victim and also a quid pro quo sexual harassment exist with the position of the same rank, for example where work evaluations take into account comments for co-workers. When a same rank worker comment on her co-worker and demand for any type of sexual favour so these situation also include in quo pro quo sexual harassment. It is important to stress that in

⁴⁰ Government of India Ministry of Women and Child Development, “*Handbook on Sexual Harassment of Women at Workplace*” (November, 2015).

⁴¹ Timothy Broderick and Katrina Sakeen, “A Victim’s Guide to Sexual Harassment”, “Quid pro quo” translates from Latin to English as “this for that.” The basic idea is that of an exchange. I do something for you, and you, in turn, do something for me. You may have heard the saying, “You scratch my back and I’ll scratch yours.” This conveys the same underlying message, and it is what is at the heart of quid pro quo sexual harassment claims. Quid pro quo sexual harassment occurs when a supervisor makes sexual conduct of an employee a condition for employment benefits or advancement, or a condition for avoiding adverse employment action. Adverse employment action may include poor performance reviews and preclusion from advancement or salary increases. Available at <<http://www.sexualharassmentlawyersanjose.com/online-e-book/chapter-two-quid-pro-quo-sexual-harassment-and-hostile-work-environment-sexual-harassment/>> (Visited on 07/06/2016).

quid pro quo sexual harassment cases, it is not necessary for the threat of adverse employment action to actually have been carried out. It is sufficient for the complainant to simply prove that such a threat was made.

This was illustrated by the condition in Burlington, where the complainants' supervisor was found to have made 'offensive remark' some of which accompanied with threat. One offensive incident took place on a business trip when the complainant's supervisor invited the complainant to join him to the hotel lounge. The complainant accepted the offer because he was her boss. In the lounge the supervisor then made remark about her breasts. When she opposed for this act of supervisor, he told her that he could make her life 'very easy or very hard' at the company. After several months when the woman was being considered for promotion, the supervisor expressed reservation during the promotion interview that she was not "loose enough", then reached over and rubbed her knee. Although the woman received promotion, when the supervisor called to inform her of this, he said "you are gonna be out there with man who work in factories and they certainly like women with pretty legs". On the third occasion, the complainant in Burlington called her supervisor to ask permission for some work related to business. He answered that "I don't have enough time for you unless you want to tell me that what you are wearing." The woman told him that she had to go and cut the phone call. After few days, she called again to his supervisor for permission again. This time also he denied her request and asking, "Are you wearing shorter skirts yet because it would make your job lot of easier."

Burlington established that veiled threat and demeaning comments can constitute sexual harassment even when the threats are not carried out. Furthermore, sexual harassment at the workplace can exist even when the victim receives a promotion though the decision of the perpetrator. This case also established that when a supervisor places obstacle in the way of the performance of an employee's duties, or delays reasonable requests made by the employee in the course of carrying out her duties, in addition to making sexual comments, it

amounts to sexual harassment.⁴² Following are the some examples of scenarios that constitute quid pro quo or 'this for that' type of sexual harassment at the workplace.⁴³

Scenario Example 1

Ritu is a brilliant youthful group pioneer working in a call focus. Known not direct, she is devoted, dedicated and is a stickler. Ritu stays back at work late one night with her partner Ravi to finish work for an essential presentation. Ravi offers to purchase Ritu supper and later drop her home since it's been a difficult day. After supper, Ravi proposes to Ritu that he might want her to go through the night with him. Ritu declines amiably yet solidly and goes home. Next night, Ravi rehashes his solicitation and on Ritu's refusal, debilitates her that on the off chance that she doesn't give-in, he will tell everybody that she made a pass at him.

What is Workplace "this for that" Sexual Harassment?

In the above illustration, Ravi's danger to Ritu that in the event that she doesn't consent to his "request" for a sexual support, he will consequently spread her character at the working environment as a man who needs to utilize sexual favors further bolstering her advantage constitutes quid pro quo of sexual harassment. Ravi's conduct is unwelcome, sexual, and negatively affects Ritu.

Scenario Example 2

Kavita is employed as a domestic worker where she is relied upon to deal with all the family exercises, other than cooking. A large portion of the days, the woman of the house leaves early. Kavita is along these lines taken off alone in the house with a male individual from the family unit. Kavita finds the male part always scoffing at her when he is at home and regularly strolls around the house wrapped in only a towel which makes her exceptionally uncomfortable. On one event, while she was clearing, he squeezed her bottom. When she challenged that she will grumble to the woman of the house, he undermined to blame her for taking, and that he will guarantee that she loses her employment.

What is Workplace "this for that" Sexual Harassment?

⁴²Indira Jaising, "*Sexual Harassment at Workplace*"17-18 (Universal law publication, New Delhi, 2nd Edition, 2014).

⁴³ Government of India Ministry of Women and Child Development, "*Handbook on Sexual Harassment of Women at Workplace*" (November, 2015).

In the above case, the male part by undermining Kavita to stay silent about the unwelcome physical contact in the event that she needs to proceed with her business submits quid pro quo type of sexual harassment. His conduct happening in a network of force, is unwelcome, sexual and has a negative effect on Kavita.

Scenario Example 3

Aanchal is a legal counselor who fills in as a scientist at a NGO in Delhi since 2012. Dr. Rahul is the chief of the association and has dependably supported for the reason for human rights. Amid an official field visit to Shimla for 2 days, Dr. Rahul observes a chance to be separated from everyone else with Aanchal and makes a physical development. Regardless of her challenges, he drives himself on her while giving startling and sexually unequivocal subtle elements of his connections, over a significant time span, with ladies. At the point when she chastens him and undermines to make his conduct open, he threatens to destroy her career.

What is Workplace “this for that” Sexual Harassment?

In the above case, by threatening Aanchal with the annihilation of her vocation, Dr. Rahul confers compensation sexual harassment. His physical advances and sexual discussion are unwelcome for Aanchal and happen in a framework of force.

Hostile Environment

As stated above, the word “hostile environment⁴⁴” is found in Article 2 of the *Vishaka* guidelines. Although the phrase “hostile work environment” is not defined in either decision of the Supreme Court, it now finds statutory reflection under section 2(n) read with section 3(2) of the 2013 Act.⁴⁵ Than we can say that ‘Hostile working environment’⁴⁶ is more

⁴⁴ Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759, in this subsequent decision the Indian Supreme Court relied on the guidelines to determine whether the perpetrator’s conduct had created an “intimidating and hostile work environment”. The Court cited the guideline’s reference to hostile work environment as one of the reason for reversing the High Court’s finding that there had been no sexual harassment.

⁴⁵ Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013 section 2(e) reads "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

pervasive form of sexual harassment involving work conditions or behaviour that make the work environment 'hostile' for the women to be in. certain sexist remarks, showing pornography or sexist graffiti, physical contact against female employees and some examples of hostile work environment, which are not made conditions for employment.

It is useful to examine hostile environment cases⁴⁷ in other common law countries. In a case the U.S. Supreme Court undertook a detailed analysis of what constitutes hostile environment sexual harassment. The court quoted with approval the Federal Equal Employment Opportunity Guidelines (EEO guidelines)⁴⁸. The Equal employment opportunity commission characterizes this kind of sexual harassment as "unwelcome sexual gestures, demands for sexual favors, and other verbal or physical behavior of a sexual nature". At the point when such direct has the reason or impact of nonsensically meddling with a people work execution or making a scary, antagonistic or hostile working environment.

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- i. physical contact and advances; or
 - ii. a demand or request for sexual favours; or
 - ii making sexually coloured remarks; or
 - iv. showing pornography; or
 - v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

⁴⁶ Timothy Broderick and Katrina Sakeen, "A Victim's Guide to Sexual Harassment", "Hostile work environment" sexual harassment occurs when an employee is subject to unwelcome advances, sexual innuendos, or offensive gender-related language that is sufficiently severe or pervasive from the perspective of a reasonable person of the same gender as the offended employee. This type of harassment must be sufficiently severe or pervasive to alter the conditions of the offended employee's employment and create an abusive environment. A single instance of sexual harassment in the hostile work environment context may be sufficient if the conduct is severe enough, but repeated instances increase the pervasiveness of the events, so that a reasonable person would be more likely to find the conduct sexually harassing due to its repetition. Available at <http://www.sexualharassmentlawyersanjose.com/online-e-book/chapter-two-quid-pro-quo-sexual-harassment-and-hostile-work-environment-sexual-harassment/>> Visited on (07/06/2016).

⁴⁷ Meritor Savings Bank v. Vinson 477 US 57 (1986).

⁴⁸ EEOC Guidelines on Discrimination Because of sex, 29 C.F.R. Section 1604.11(a)(3), it states that sexual misconduct constitutes prohibited sexual harassment "whether or not is directly linked to the grant or denial of an economic quid pro quo, where 'such conduct has purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.'".

The court of Appeal for Ontario, Canada embraced a previous judgement and in this judgment the court holding that sexual harassment is a wrong and it is a demeaning practice and it is always unwanted approaches or comments which are based on gender and sexually oriented.⁴⁹ The court also held that Sexual harassment is a violation of someone's freedom and personal liberty. Sexual harassment can ruin the victim's life. It is a wrong who affects the dignity of women. Following are the some examples of scenarios that constitute "Hostile work environment" type of sexual harassment at the workplace.⁵⁰

Scenario Example1

Meghna works in a factory in Bangalore. Varghese, Meghna's director, frequently tries to touch her on one or the other guise. For instance, he modifies her dupatta while she is sewing at her workstation on the guise of covering her back. Meghna is extremely uncomfortable with his conduct. Her partners at the work environment disparage Meghna and fake her for the 'uncommon treatment' by her manager. They regularly talk about her and Varghese.

What is a Hostile Workplace Environment Sexual Harassment?

In the above case, the physical touching by Varghese is unwelcome and sexual in nature. The tattle, which depends on Varghese's conduct towards Meghna at the working environment, is making a hostile work environment workplace for Meghna.

Scenario Example 2

⁴⁹ Bannister v. General Motors of Canada Limited, 40 O.R. (3d) 577 (1998), in this judgement the court holding that sexual harassment at workplace is wrong not simply because it "is a demeaning practice , one that constitute a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment at workplace attacks the dignity and self-respect of the victim as an employee and as a human being." The court further held that work environment where abuse and sexual innuendo flow freely are prohibited, as "no female should be called upon to defend her dignity or to resist or turn away from unwanted approaches or comments which are gender and sexually oriented."

⁵⁰ Government of India Ministry of Women and Child Development, "*Handbook on Sexual Harassment of Women at Workplace*" (November, 2015).

Rakhi is an everyday wage worker working at a development site. Consistently at lunch time, Rakhi sits under the shade of the tree to encourage her 16-month old baby. She saw Sanawar, a laborer, gazing at her from the separation. Rakhi feels uncomfortable and requests that Sanawar avoid her while she's nourishing the child. In any case, Sanawar perseveres and dependably finds a spot close to her. The gathering of kindred development specialists now continually heckle and shriek at Rakhi each time she strolls their approach to refill the bond or mortar. When she doubts them, they advise her they are just kidding amongst themselves.

What is a Hostile Workplace Environment Sexual Harassment?

Gazing, stalking and tattling against Rakhi in the above illustration constitute a hostile work environment, a type of working environment sexual harassment.

Conclusion

In this chapter researcher focused upon the definition part of sexual harassment and also focused the historical background and origin of the word sexual harassment. Researcher defined the definition given by various seminars and organizations. At the international level UN define sexual harassment as such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.⁵¹ The definition of sexual harassment in CEDAW includes all types of sexually behaviour whether physically or mentally which are unwelcome and which affects the dignity of women. The International Labour Organization (hereinafter ILO) committee of experts has also define that sexual harassment is a form of sex discrimination.⁵² In this chapter researcher has divided the historical background of sexual harassment into two parts. Firstly, "Sexual Harassment Before 1970" and "Sexual Harassment After 1970". Before 1970's the word sexual

⁵¹ [Convention on the Elimination of all Forms of Discrimination Against Women](http://www.ohchr.org/Documents/professional/eliminationvaw.pdf), (December 20, 1993) available at www.ohchr.org/Documents/professional/eliminationvaw.pdf (May 23, 2016).

⁵² C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

harassment was not being used. Nobody use the word sexual harassment for any such offences relating to women. In any case, conduct of that sort, later came to be named sexual harassment. The word sexual harassment instituted in 1970's by women's feminist activists, and their origination of sexual harassment was socio-cultural. Linfarely claims to have found the Phenomenon of sexual harassment⁵³. Lastly, In India, sexual harassment of women has not been articulated as a juridical classification of crime in Criminal law. It was just in 1997 where the sexual harassment defined as a crime in Indian Penal Code (hereinafter IPC).



⁵³ Lin Farley, "*Sexual Shakedown: The Sexual Harassment of Women on the Job*" XI (McGraw-Hill, 1st Edition, Oct, 1978).