

VARIOUS FORMS OF SEXUAL HARASSMENT OF WOMEN IN THE CORPORATE SECTOR

Written by Vasundhara Mahajan

4th Year B.COM LLB Student, Amity Law School Noida, Uttar Pradesh

ABSTRACT

Sexual harassment in the workplace is nowadays a growing problem in the era and is a profound product of the cemented patriarchal culture engaged in prevailing practices. The days have gone by when women used to be home-made as with the inset of globalization women have started to work in different sectors, such as in the private sector, where sexual harassment has become the workplace process.

Sexual harassment has been considered a big problem in the world today through the massive inflow of females into India 's personnel workforce. Various regulations have been developed to combat workplace sexual harassment. India's constitution guarantees human rights such as the right to fair justice, the right to life and the right to dignity. There are, however, several loopholes in the legislation, leading to lax law enforcement and infringement of human rights, which in effect creates antagonistic work environments and does not keep violators responsible because of the anguished fables of abuse of women staff. Moreover, the biggest problem in our society is that many of the cases are not reported because of fears raised by blackmailing, acid attacks etc. against women.

The paper seeks to highlight on the weak law enforcement. It underlines the need for the hour to ensure the health of women so that they can be instrumental in the country's progress. In addition, the paper also aims at discarding some light on the different forms and issues of sexual harassment of women in the socially prevalent corporate sectors and how it is essential to change the perspective in which we look at them and the methods of collecting the same, thus striking the very root cause of it.

INTRODUCTION

The UN Convention on the Abolition of All Modes of Discrimination against Women, which was adopted by the 1979 UN General Assembly, accepted by India, provides for equality and security in all spheres, be it social, cultural, political for men and women. Sexual harassment not only includes the penile penetration but also includes unwelcomed gestures, passing lewd comments, making noises etc. Throughout ancient times, women were known as icons of SHAKTI indicating that power is today victimized from "men to women".

Workplace sexual harassment not only creates antagonistic, unhealthy work climate for women, but also hinders their ability to live with dignity. Economic dependency on work, the burden of obedience to superiors causes women to succumb to such improper behaviour. By sexual harassment women suffers both physical and mental torture. Due to mental pressure women suffers with depression and post traumatic disorders. Sexual harassment is such a cruel offence faced by women either in their workplaces, by staff members or at home. Every woman who has faced with the problems of sexual harassment do no let loud the incidents as they have the fear of being attacked again either through rape, assault and acid attacks.

Women plays a significant role in the nation's development by contributing in developing and agricultural sectors, economic attributes. Therefore, by performing these roles in the development each and every woman should be provided with a safe and a secure working environment by taking all the preventive measures to avoid any case of the sexual harassment in any field.

In the recent report of Crime in India 2016 by National Crime Records Bureau Ministry of Home Affairs, majority of cases under crimes against women were reported under "Cruelty by Husband or His Relatives" was 32.6% , 'Assault on Women with intent to outrage her Modesty' amounting to 25.0%, 'Kidnapping and Abduction of Women' (19.0%) and 'Rape' (11.5%). In Uttar Pradesh the number of cases of crimes against women appeared to be 14.5% (49,262 out of 3,38,954 cases). In 2016, West Bengal (9.6%) (32,513 cases). Delhi Union Territory had the highest crime rate (160.4) in comparison to the national average rate of 55.2^{vi}

BACKGROUND OF SEXUAL HARASSMENT

Sexual harassment at workplace was ubiquitous. Women in the world have instances regarding the growing concern of the sexual harassment. The need for building legislations and guidelines for women in the working environment were recognised when one of the most debatable and controversial gang rape Vishaka & others v. State of Rajasthan & others in 1992.

In accordance with this, Government of India recommended the National Commission of women to draft a legislation providing a platform for women in the unorganised sectors and to incorporate provisions in the law. In 2004 the bill was introduced Sexual Harassment of women at workplace (Prevention and Redressal). The bill provides for the prevention and redressal of sexual harassment of women at workplace arising in the course of employment and others matters concerned, keeping with the principles of equality and dignity as enshrined in the Constitution of India.

Vishaka & Others V. State of Rajasthan & Others

Vishaka and ors v. Rajasthan State, unethical in women at work being sexually abused. Where Bhanwari Devi was a social activist, she was engaged to stop infant daughter's child marriage. She was brutally assaulted in front of her husband by antiquated patriarchs. After fighting in Rajasthan High Court with this battle, she was not served with justice and the rapists were bailed and allowed to go. Public Interest Case was brought before the Supreme Court by a group of feminist activists.

The landmark judgement was elapsed by the Supreme Court in 1997 in matter relating to the Vishaka case, which laid down guidelines to be adhered to by the establishments in dealing with complaints regarding sexual harassment. The court ordered that until the legislation is passed to deal with this issue, these guidelines were to be implemented.

The Vishaka case is a landmark judgement of sexual harassment at workplace. Not because it was attack on working women's fundamental right to work without fear and prejudice or not because it is a saga of immense torture of a naïve working woman. Not because a woman showed exemplary outrage to fight against the male ego and our immoral society. It is a landmark case because for the first time in history it was officially recognized at such a high

level of need for laws for sexual harassment and laying down of guidelines of sexual harassment of working woman.

Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004

Sexual Harassment of Women at The Workplace (Prevention and Redressal) Bill, 2004 is a bill that was introduced in the Indian Parliament. The main aim of this bill was to include the rights set out in India's Constitution which are the values of life, justice, equality and democracy. It was held in the *Vishaka v. State of Rajasthan*ⁱⁱ as contemplated in the Convention on the Elimination of all Forms of Discrimination against Women which has been sanctioned by the Government of India.

Despite all the efforts, fights making of legislations the implementation took a back foot. There were legislations and punishments but no fear in the minds of people. Various noted cases were reported regarding sexual harassment at workplace.

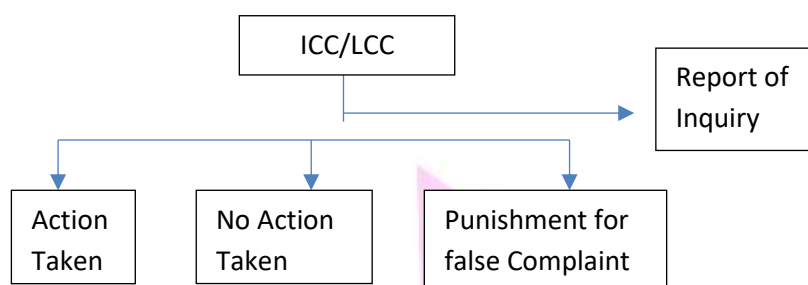
AK Ganguly was a Supreme Court judge; he was accused by an intern of sexually harassing her at a hotel in New Delhi during December 2013. This incident was first reported by the intern through a blog written by her. As result of this, the Chief Justice of India decided to set up a panel to ascertain the accuracy of the former intern's accusations. A three-judge committee of the Supreme Court came to conclusion for committing an act of unwelcome behaviour. Ganguly was prosecutedⁱⁱⁱ.

The infamous Harvey Weinstein the American producer was accused by over 8 women of sexual harassment and non- consensual sex in the work place. There issues came to the forefront through the *#me too movement* where women from all walks of life from the shop floor to the highest level of work came forward to tell their stories about harassment^{iv}.

Vishaka Guidelines

The Protection of Women against Sexual Harassment at Workplace Bill (2010) was the first effort to build legislation to control this offence. It lays out complaint and redressal apparatus in the way of Local Complaints Committees (LCC) in every sub-district and districts. The enquiry gets completed within 90 days by the committee and the recommendations are carried

out by the district officer within 60 days. If there is any infringement with respect to bill, fine of Rs 50,000 will be imposed.



According to the above chart, if there is any incidence that takes place in an organisation, the complaint will be made under Internal Complaints Committee. The Committee or Local Complaint Committee and the employer is required to take action on the decision given by the committee within 60 days and if the respondent remains unsatisfied with the decision taken by the Committee, he can file an appeal within 90 days from the date of recommendation.^v

Various Landmark Judgements

1.Apparel Export Promotion Council v. Chopra

In case Apparel Export Promotion Council v. Chopra, emphasis was placed on sexual harassment based on gender inequality where the same was cited by the International Labor Organization. In 2007, In Parliament the Sexual Harassment at Workplace Bill was proposed.^{vi}

2.Grewal v. Vimmi Joshi

Grewal v Vimmi Joshi^{vii}, while delivering the ‘judgements related to sexual harassment emphasis on provision of the bill were laid. However none of them forcefully asked for a bill to be passed, thereby turning a blind eye to the issue. It was there after 16 years that a bill was passed relating to sexual harassment in India. It was there after 16 years that a bill was passed relating to sexual harassment in India. One would thus naturally expect the bill to be highly comprehensive and free from faults. However that was not the case to be. The bill not only faulted on certain essential provisions, but also failed to take account of certain inviolable theories relating to the aspect of sexual violence.’^{viii}

3. Medha Kotwal Lele v Union of India

The case of *Medha Kotwal Lele v Union of India*^{ix} was highlighted that the 'guidelines in Vishaka are followed in breach. The women workers are subjected to harassment through legal and extra-legal methods and they are made to suffer insult and indignity^x. It was pointed out that India is the largest democracy in the world and the existing laws, if necessary be revised and appropriate new laws be enacted by Parliament and state legislatures to protect women any form of indecency, indignity and disrespect at all places, whether homes or outside and prevent all forms of violence. Lip service, hollow statements, inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of women^{xi}

Causes

1. Male Dominance: 'The authoritative men i.e. men in power, making sexual favours towards female subordinates by this one can commonly understand that this kind of male behaviour is only about the sex to which we call popular perception. But the real matter isn't sex; it's sexism on the job. The fact is most harassment isn't about satisfying sexual desires but it's about protecting work especially the most favoured lines of work. Much of the harassment women face at the workplace isn't "sexual" in content or design but the motive behind this is to show the domination of male folk. And this kind of behaviour determines the gender difference and to claim work as a domain of masculine mastery^{xii}

2. Inferior Job Position: 'Women usually wield less hierarchical power in organizations, and men have more, sexual harassment serves as one method of the powerful asserting control over the powerless. This suggestion is supported by findings that women are more likely to be harassed when they move into higher levels in organizations or into non-traditional areas. The individuals with less power tend to be more attentive to the individuals with more power than the reverse. This clearly shows that the persons with inferior job position in an organization^{xiii} or in institute are more prone to sexual harassment than a person in power^{xiv}

3. Aggressive Masculine Trait of Male Gender: Different researches reveal that harassers are found in all types of occupations at all organizational levels, inside and outside home and even among the college professors. The sexual harassment is said to be an outcome of extreme competitiveness and concerns with ego or there is always a fear of losing position of power or

dominance among men. They do not want to appear weak or less masculine in the eyes of other men. In order to show their dominance, they engage in harassing the women colleagues. So, this becomes clear here that the masculine aggressiveness causes the sexual harassment of women.

4. Misapprehension about the affectionate nature of Women: It is familiar that men in an organization began to harass their women colleagues who are quite friendly in nature. They perceive that these women are sober in nature and if we seek sexual favours from them, they will accept. But that was not what women herself indicated her intention to be. And this ultimately leads to the fact that the women are being perceived as of having a sexual interest by being friendly. This friendly nature woman with their men colleagues in an organization or in general social setup becomes the cause of sexual harassment.

5. Higher Academic Profile and Lesser Job Opportunity: In our present-day society we are familiar with the fact that there exists more of women participation with higher academic degrees rendering for job but the available job position are lesser than these highly educated young women. When these talented and efficient women began their journey to find a job in an organization may it be an educational institute or other private or government sector they are harassed and advanced by sexual favours by the person in charges and for that they are assured to be offered a job. This behaviour of male components of an organization who are in higher positions leads to an outcome of 'Quid Pro Quo' (This for That). Later when these girls are attached to a particular job position in an organization they are often asked for sexual offers for promotion, salary increase and other conditions of employment. No doubt this is surely the case of our present society and this becomes one of the basic causes of sexual harassment of young educated women.

INTERNATIONAL AND NATIONAL LEGISLATIVE FRAMEWORKS RELATED TO SEXUAL HARASSMENT

International Legal Mechanisms

India 's contribution to the various international discussion forums and the enactment of international treaties on women's human rights is a declaration of commitment in ensuring women's dignity and equality in all areas of life as clearly stated in the Indian Constitution.

- Universal Declaration of Human Rights, 1948: Equality in dignity, rights and freedoms and equal protection against any discrimination are enshrined in Articles 1, 2 and 7.^{xv}
- ILO Discrimination (Employment and occupation) Convention, 1958, focused to protect discrimination in occupation and employment on the grounds of sex, race, colour, religion, political opinion, national or social origin. In 2003 a general observation was made by ILO Committee of Experts, on the Application of Conventions and Recommendations (CEACR) highlighted that sexual harassment is a form of sex discrimination and within the requirements of Convention No. 111 it should be addressed. In the view of the consequences and serious reverberations of sexual harassment, the CEACR has try to persuade governments to take suitable measures to prohibit sexual harassment in employment and occupation and has provided constituents of a definition of sexual harassment^{xvi}
- International Covenant on Economic, Social and Cultural Rights, 1966: enjoins all states to guarantee rights enunciated in it without discrimination of any kind. It ensures that state must provide equal opportunities to men and women in all the spheres whether it is economic, social and cultural rights. The right to fair conditions of work is enshrined in Article 7^{xvii}
- United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979:^{xviii}State parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights. There are also resolutions, declarations and recommendations adopted by the UN and the specialised agencies promoting equality of rights of men and women.

- ‘ILO Indigenous and Tribal Peoples Convention, 1989: Governments shall, within the framework of national laws and regulations, and in co-operation with peoples concerned, adopt special measures to ensure that workers enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment (Article 20.1-3 (d))’^{xix}
- ‘ILO Decent Work for Domestic Workers Convention, 2011: Under this convention it was ensured that each member shall take protective measures for domestic workers against all forms of abuse, violence and harassment (Article 5)’^{xx}
- ILO Resolution on Equal opportunities and Equal Treatment for Men and Women in Employment, ILC, 71st Session, 1985 recommended that measures be taken to extend social protection to women and men concerning reproductive hazards and sexual harassment.
- UN Declaration on the Elimination of Violence against Women, 1993^{xxi}: The declaration on the elimination of violence against women is the first international human rights instrument to exclusively deal with the issue of violence against women. It affirms that violence against women violates, impairs or nullifies women’s human rights and their exercise of fundamental freedoms. Violence against women would encompass but not be limited to physical, sexual and psychological violence occurring in the family, occurring within the general community, perpetrated or condoned by the state wherever it occurs.
- The Beijing Platform of Action drawn at the United Nations’ Women’s Conference in Beijing in 1995 called to advance women’s rights and to eliminate violence against women including sexual harassment at work.
- ‘ILO HIV and AIDS Recommendation, 2010’^{xxii}: Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by: for the prevention and prohibition of violence at the workplace.

Constitution of India

The basic objective of the Constitution of India is to protect all its citizens with Justice, Liberty, Equality, Fraternity and Dignity as it is laid down in the Preamble to the Constitution of India.

Fundamental rights endowed in the Constitution:

- Article 14: Right to Equality through equality before law and through equal protection of laws. The concept of equality does not always mean absolute equality amongst human beings. It is a concept of implying achieve of any special privilege by Constitutional Law of India by reason of birth, creed or like in the favour of any individual and also the equal subject of all individuals and classes to the ordinary law of land.
- Article 15: It lays down that there will be no restrictions on the basis of any discriminatory grounds that is caste, religion, sex, race, economic, political and social grounds in order to access the public facilities, shops, hotel, restaurants and other places.
- Article 19 (1) (g): Guarantees that all citizens have the right to practice any profession, or to carry on any occupation, trade or business. However, the right to carry on trade or profession or business is not unqualified. It can be restricted and regulated by the authority of law.^{xxiii}
- ‘Article 21: Enshrines the right to life and personal liberty.’^{xxiv}

Relevant Constitutional provisions:

- Article 51: The state shall endeavour to foster respect for international law and treaty obligations.
- Article 253: Any decision made at international conferences and international agreements for implementing any treaty, convention or agreement for the whole or part of territory of India, the Parliament has the power to give effect to it.

Prevention of Sexual Harassment (Posh Act & Posh Rules)

The main aim of this act was to prevent women from being sexually harassed in the work sector. Each organization should adopt a healthy and secure work environment. A working climate for gender equality should be introduced, employers, supervisors, directors should be aware of what constitutes and what does not constitute sexual assault.

Sexual harassment is the act committed by any person using loose tongue, offensive or unwelcome gestures on women. This act's major goal was to raise awareness and familiarize workers with the legal structures and policies. There should be an internal complaint committee of more than 10 members, where any complaints or grievances can be heard.

Indian Penal Code, 1860

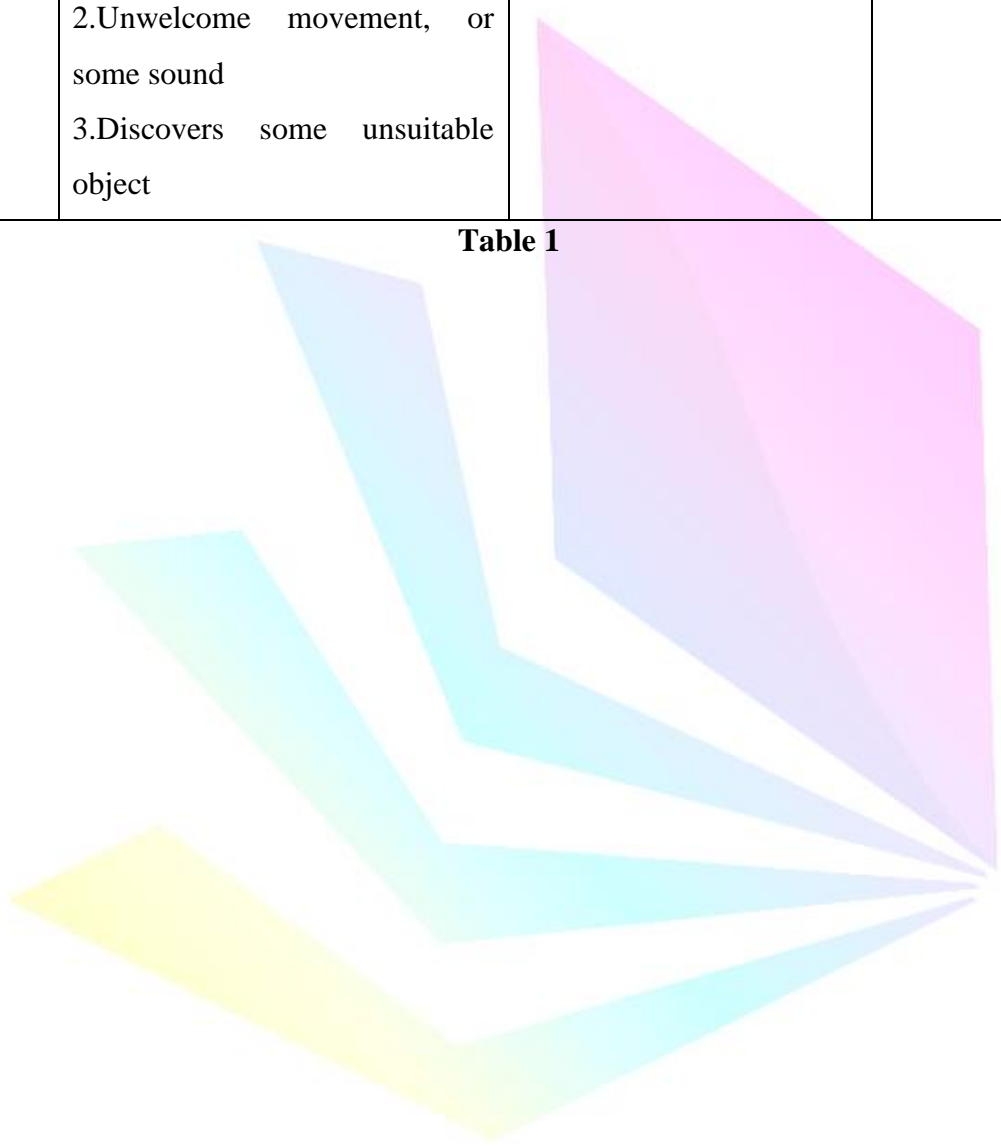
Activities arising from sexual assault may only violate workplace prevention or sexual harassment, but can also be included as an offense under the IPC. The provisions under the IPC which could be activated in a sexual assault case are listed below.

Section	Offence	Punishment	Bailable/ Non Bailable
354	Outraging the modesty of a woman Any person who assaults or use any criminal force against woman, resulting to outrage or it is likely that modesty would be outraged.	Minimum one year but which may be extended to five years plus fine will be imposed.	Non Bailable offence
354 -A	Sexual harassment by a man 1.Physical Contact and advances that are involving unwelcome and explicit sexual overtures 2.Demand or request made for any sexual favours 3.Showing pornography not with the will of a woman; 4.Making or commenting on women which are sexually coloured remarks	Imprisonment for maximum three years or fine or both. For sexually coloured comments, a one-year sentence or both	Bailable offence

354 -B	<p>Assault or use of criminal force to woman with intent to disrobe</p> <p>Anyone who uses illegal force against a woman with the intention of assaulting or causing her to be naked</p>	<p>Imprisonment for minimum three years but which may extend to seven years plus fine</p>	<p>Non Bailable offence</p>
354 -C	<p>Voyeurism</p> <p>A person who is involved in-</p> <ol style="list-style-type: none"> 1.Watches or 2.Captures the image of a woman, or 3.Disseminates such images <p>Engaged in a private sector or in the circumstances where she expects that no one is observing her.</p>	<p>First Conviction: Minimum one year but which may extend to 3 years plus fine</p> <p>Second or subsequent conviction: Minimum three years but which may extend to seven years plus fine</p>	<p>Bailable offence under first conviction</p> <p>Non Bailable offence under second conviction</p>
354 -D	<p>Stalking</p> <p>Any person if he follows or contacts a woman despite clear indication of disinterest by such woman.</p> <p>Physically- physically following or contacting or attempting to contact woman to foster personal interaction</p> <p>Electronically- Monitoring the use by a woman of the internet, e mail or any other form of electronic communication</p>	<p>First Conviction: Minimum three years plus fine</p> <p>Second or subsequent conviction: Maximum five years plus fine</p>	<p>Bailable offence for first conviction</p> <p>Non Bailable for second conviction</p>

509	Insulting the modesty of a woman A person who: 1.Usage of any word contending to abusive language 2.Unwelcome movement, or some sound 3.Discovers some unsuitable object	Maximum three years and fine	Bailable offence
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Table 1



STATISTICAL REPORT ON CRIME AGAINST WOMEN IN INDIA

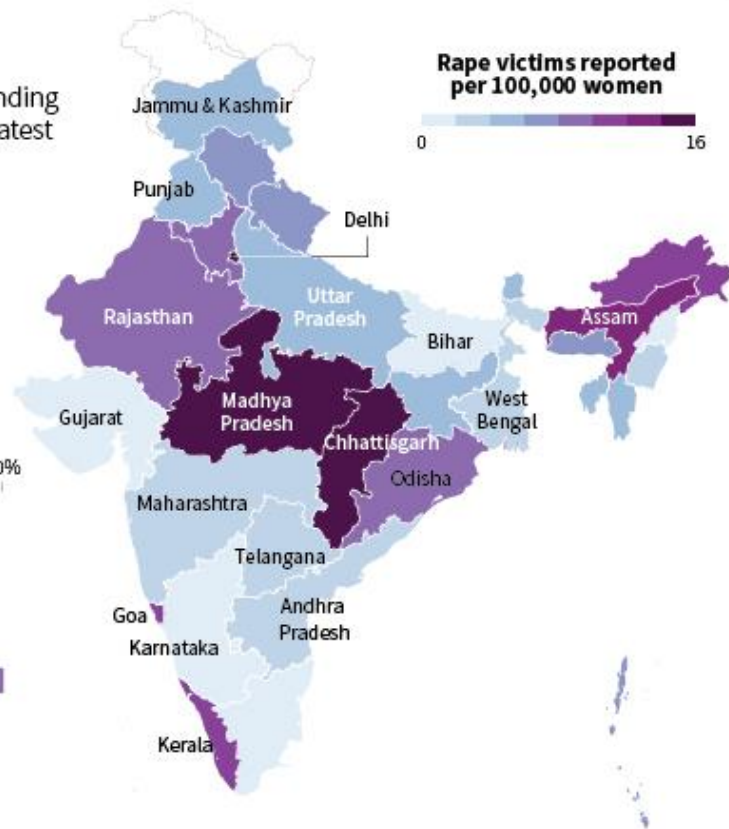
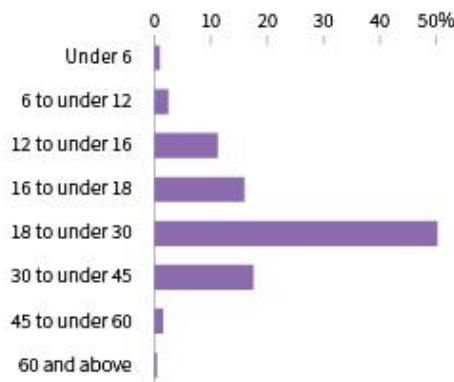
Survey on Rape Cases:

Rape cases in India

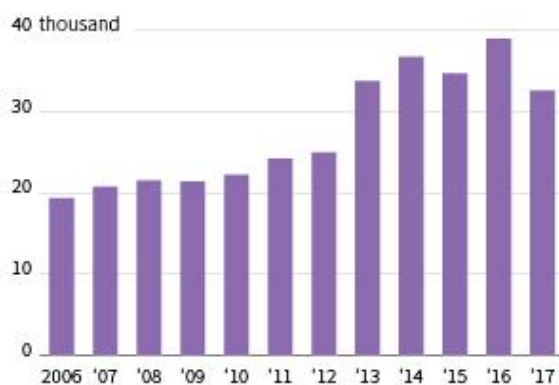
More than 128,000 rape cases were pending trial in Indian courts by end-2017, the latest year for which data is available.

Rape cases with female victims by age group

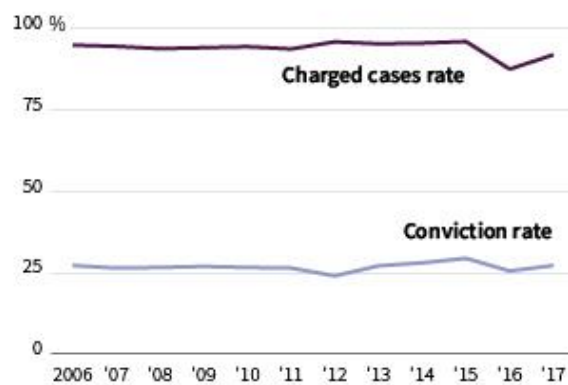
Out of the 33,000 reported victims in 2017, about 30 percent of the victims are children.



Total rape cases reported by year



Charged cases and conviction rate



Note: Crime statistics in India follows the primary offence rule. In an event where the victim is raped and murdered, the incident will be recorded as a murder and not rape, because the primary offence is what the government considers the "most heinous crime" - in this case, murder. Such cases will be excluded from data about rape.

Source: National Crime Records Bureau.

Staff, 06/12/2019



Fig3.1^{xxv}

In 2017, more than 32,500 rape cases were registered to police, on average at least 90 cases daily. Total about 18,300 cases were disposed of by Indian Courts related to rape in the same year, more than 127,800 cases were pending in the end of 2017^{xxvi}.

Survey on Various Forms of Sexual Harassment

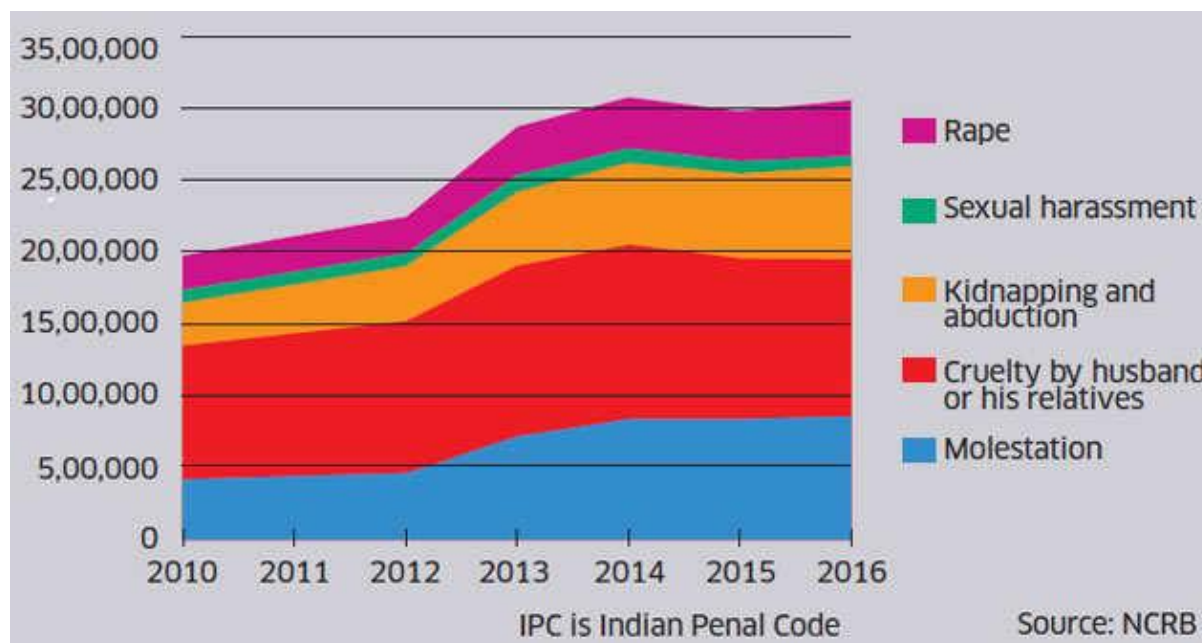


Fig 3.2^{xxvii}

As per the report of NCRB, there is rapid increase in the number of cases registered under various forms of sexual harassment under Indian Penal Code.

Problem of Under Reporting Cases

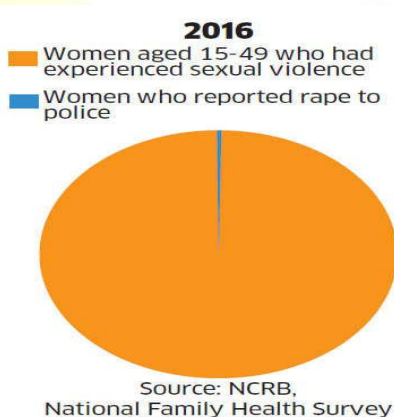


Fig 3.3^{xxviii}

In the above figure, according to the reports of NCRB 2016, it has been observed that women under the age between 14-19 have experienced sexual violence.

Increase in Cases Registered in the Workplace

According to the report of Ministry of Women and Child Development, the number of cases lodged to the police on 'sexual harassment in the workplace in India escalated 54% from 371 cases in 2014 to 570 cases in 2017'^{xxix}.

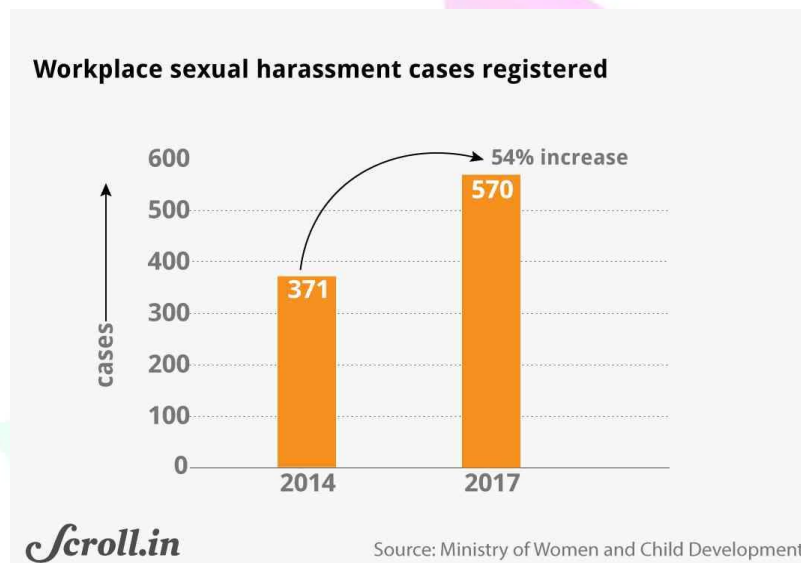
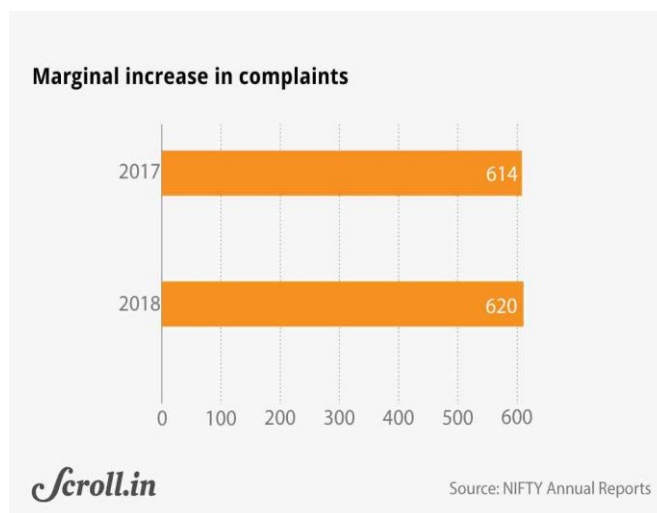


Fig 3.4

Workplaces Taking Note

Activists initiated the #MeToo movement in the hope that companies will be stimulated for the better enforcement of laws governing the cases of sexual harassment and misconduct, and escort intensive training sessions, programmes and spreading awareness to achieve this. According to the NIFTY's annual report, '44 companies show a little increase in the number of complaints filed over past years from 614 cases in 2017 to 620 cases in 2018.'

**Fig 3.5^{xxx}**

CONCLUSION AND SUGGESTION

In any progressive society, it is the very basic right of individuals to have the freedom to escort their lives with poise, free from mental or physical pain. To warrant this, transgressors must pay for their unpremeditated lewd remarks. ongoing occasions at both national and international level, have brought the fundamental issue of Sexual Harassment at working environment to the front line. Inappropriate behaviour at the working environment is a general issue. Despite the fact that the event of unwelcoming behaviour at the working environment is far reaching in India and somewhere else, this is the first occasion when it has been recognised as an encroachment of the key privileges of a lady, under Article 19(1)(g) of the Constitution of India to practice any occupation, exchange or business.

Sexual harassment of workplace is a serious matter that makes women's involvement in works unsafe and sabotages their right to work with dignity. It discourages the participation of women in work as it creates an insecure and hostile working environment, adversely affecting the economic environment and the goal of inclusive growth. The growing concern about workplace sexual harassment is attracting lot of negative attention. India recently accepted the punishment with imprisonment and fine as a felony. In today's scenario the saddest reality is that there is under reporting of the cases rather than people misusing the law. With the current legislation and the guidelines for sexual harassment, the employer is held liable for infringement of the law by its employees. Nevertheless, while the Government of India has been taking steps to

monitor implementation of 2013 Act in Government offices, there is absence of mechanism to check execution in the private sector.

Recently, the problem of sexual harassment at the working environment has accepted authentic extents, with a transitory ascent in the number of cases of sexual harassment in the workplace by men against women as per the recent report, no woman or man should have to tolerate such conduct as it hampers not only the respect but also dignity of the victim, and has adverse effects on individuals, enterprises and society. Realising the need to suppress such conduct, many countries in Asia have taken legal steps to prohibit sexual harassment at the workplace. India has also taken noteworthy action by approving the Sexual Harassment of Women at Workplace Act, 2013 India has also taken noteworthy action by approving the Sexual Harassment of Women at Workplace Act, 2013.

By raising awareness of the issue and helping people understand the definition of sexual harassment, some specific steps that can be taken to mitigate the question of sexual harassment.

It is important to ensure that the workplace policy is in effect and that consistent harassment reporting processes are in place in the organisation. Each organization should have dedicated a person to immediately review any allegations. The workplaces should adopt Zero Tolerance Policy.

However, there was no domestic law to deal with this issue except a few accountable provisions of the Indian Penal Code and the Supreme Court Guidelines in the case of Vishaka v/s State of Rajasthan. The Act had in its background from the famous Vishaka Case which laid down the “Code of Conduct for Workplace” to enforce the fundamental rights of working men under Articles 14, 19 and 21 of the Constitution of India. In this judgment, the Supreme Court stressed the need to follow the Vishaka guidelines in India's workplaces and urged the need for appropriate legislation in this direction. Codification has been a much-awaited change and a big step towards raising awareness on the issue of workplace sexual abuse and ensuring a safe, stable and healthy atmosphere for women.

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^{xxiii}Freedom of Business, Trade and Profession. <http://www.legalservicesindia.com/article/2272/Freedom-of-Business,-Trade-and-Profession.html>

^{xxiv}legislative.gov.in

^{xxv}Fig:3.1 NCRB survey on rape cases

^{xxvi}<https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV>

^{xxvii}Fig 3.2 NCRB survey on Indian Penal Code

^{xxviii}NCRB report on sexual violence

^{xxix}Ministry of women and child development report

^{xxx}NIFTY Annual Report

