

## #ME TOO: SEXUAL VIOLENCE AGAINST MEN WITH REFERENCE TO WORKPLACE

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### ABSTRACT

Sexual violence can happen to any soul, no matter irrespective of the age, the sexual attitude, or the gender identity. The majority of rape and harassment incidents involve females, and laws are specifically designed to protect female victims of these crimes. Sexual harassment, which can take many different forms, including physical, verbal, non-verbal, and visual, is an unwanted sexual advance that interferes unreasonably with a person's ability to fulfil their job duties or produces a hostile, abusive, or objectionable work environment. However, *men are not given the same amount of attention as women when it comes to harassment.*

According to the Discrimination (Employment and Occupation) Convention (No. 111) of 1958, sexual harassment is a type of sex discrimination that is covered by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). Sexual harassment in the workplace is expressly forbidden by the Indigenous and Tribal Peoples Convention (No. 169) of the ILO. The Violence and Harassment Convention, (ILO C190) which was adopted on June 21, 2019, acknowledges everyone's right irrespective of any gender, to an environment free from violence and harassment at work.

The right to equality is described in Article 14 of the Indian Constitution, which also states that it is one of our Fundamental Rights. The challenges addressed by women are, nevertheless, given more attention in the legislation. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, refers solely to "women" and outlines specific remedies and measures for women who have experienced harassment. Through this law, only women's fundamental rights to life, dignity, and the ability to practice their profession

in a setting free of sexual harassment are recognized as being violated. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, should be extended to men as soon as possible. Additionally, the Indian Penal Code should be amended to include some particular parts to protect men from harassment. For both men and women, there must be a desire for "equal access to justice." Laws that protect men from various forms of harassment, assault, or rape in various settings must be created by the government and legislative bodies.

**Keywords-** ILOC190, Article 14, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Justice to men

## INTRODUCTION

*"Woman and children can afford to be careless, men cannot."*, Mario Puzo, The Godfather

The endeavor of exposing sexual harassment is difficult task, it is because the variety of viewpoints, concepts, and information available, as well as the social circumstances in which people and organizations interact with their opinions. A person's understanding of sexual harassment is shaped by a variety of societal influences, including religion, education, and prior encounters with sexual harassment.

One of the most prevalent social problems which exists today is the sexual violence. For most of the people whenever we talk about the sexual harassment in the workplace, our mind subconsciously paints a picture of a woman being harassed by a male boss or supervisor or a co-worker. We are unaware that anyone can experience harassment, regardless of age, gender identity or religion. Men are not given the same amount of attention as women when it comes to harassment. While the actual reality is most of the cases which involves the sexual harassment includes both the female and male victims.

The first instance of male sexual harassment, ever to be publicly acknowledged appeared in United States in the year, 1995, when a female supervisor at Dominoes squeezed the male manager's butt. The manager received \$237,000 in damages, following a lawsuit against the business. In India, the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act was first passed in 2013, and the protections were limited to women and

their modesty. Is this a result of the lack of workplace sexual harassment against males in India? No, as it turns out, men are frequently harassed sexually in India.<sup>i</sup>

According to the Prohibition Enforcement Wing (PEW) research, in the year 2014, 13% of males and 25% of women between the ages of 18 and 24 reported experiencing sexual harassment online. Men's harassment cases statistics are too numerous to ignore. In India, there are various laws and regulations that deal with sexual harassment of women. We also cannot ignore the sexual harassment of men, though. According to Article 14 of the Indian Constitution, provides "right to equality", this right is being continuously infringed if legislation predominantly emphasizes issues relating to women while ignoring issues connecting to men.<sup>ii</sup> Therefore, both men and women must have equal access to the court of law.

## **MEANING OF SEXUAL HARRASMENT**

The United States, Equal Employment Opportunity Commission (EEOC) describes workplace sexual harassment as "*unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that explicitly or implicitly affect an individual's employment, unreasonable interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.*"

In general term, making unwanted requests for sexual favors, making inappropriate remarks about someone's body or appearance, saying inappropriate things, making fun of someone who is a particular gender and using gender-based slurs, and making vulgar, derogatory, or offensive jokes about sex or sexual acts are all instances of sexual harassment at work. It also includes, inappropriate or unwanted touching of any body part, hugging, kissing, leering, or making gestures by blocking someone's motion. Additionally, it consists of sending or sharing vulgar pictures or pornography, as well as attempting to create a hostile work environment. The harasser's viewpoint is irrelevant for something to qualify as sexual harassment. It only matters what the person who is harassed contemplates of the occurrence and whether they believe it to be true.

## **SEXUAL HARRASMENT IN WORKPLACE**

When a worker or job applicant experiences inappropriate physical contact, sexual remarks, or sexual advances at work, it is considered sexual harassment.

Sexual abuse can be committed by non-binary people, women, or males. It may target hiring managers, female or male employees, or non-binary job candidates. It is never relevant to a sexual harassment allegation whether the victim or the harasser is a man or a woman. They are based on whether the sexual content of the remarks, behaviors, or physical touch is offensive and unwelcome.

## **UNREGISTERED WORKPLACE SEXUAL ABUSE ENCOUNTERED BY MEN**

According to Roberta Chinsky Matuson, many individuals mistakenly believe that harassment only affects women. Along with physical and psychological abuse, the abusers of the victims also use a variety of emotional coercive techniques, to maintain their positions, male employees are occasionally exposed to mental abuse at work. Even when they do not want to, men who need jobs and have no other options must consent to sexual advances from women or male coworkers. However, these violent acts hurt the victim's soul as much as his physical body.

Men frequently have the expectation that they should just grin and bear any sexual remarks or behaviors. They believe that because they reported sexual harassment, the employees and other associates will tease them and make their lives more difficult. The toxic masculinity that exists in the workplace may be reflected in men's decision to not report sexual harassment. Therefore, many men decide to overlook the sexual harassment that they experience and deal with the hostile work environment rather than risk criticism or retaliation.<sup>iii</sup>

There are no precise data on the number of men who has experienced sexual harassment at work or the number of men who report it. The reason for this is a dearth of complaints. Here are a few likely explanations, that may provide a scenario on why men refrain themselves to not report any such experiences:

1. Men could feel threatened by the sarcastic comments of their coworkers'.
2. They might think that a woman can never actually sexually harass a man.

3. If any incidents of harassment were leaked, there is a continuous fear of embarrassment among them.

According to Indian law, women are the only ones who have any sense of modesty. An inappropriate sexual advance on a man is only considered an offence under the definition of Sodomy found in Section 377 of the Indian Penal Code, 1860. Aside from that, there is no legal sanction for touching a man. This non-existence of law does not imply any absence of crime against men, as it is already mentioned, many men experience sexual harassment at work from both men and women.<sup>iv</sup>

## **THE INTERNATIONAL OUTLOOK**

In the worldwide, unprofessional behavior in the workplace is viewed as a violation of women's rights and nobility and as violence motivated by sexual orientation. Currently, sexual harassment is seen as a reflection of men's authority over women. In order to avoid sexual harassment at work and raise awareness about it, the international community has over the years created international standards and norms. The objective of achieving global equality must be followed. The international society has made some observations, such as the identification of workplace sexual harassment as a kind of human rights violation that is also seen as gender-specific violence. Human worth, equality, and decency will always be valued. The term "gender-based violence" encompasses workplace sexual harassment. The laws adopted by several nations to defend against sexual harassment describes it as a form of discrimination and a violation of women's rights.

The International Labor Organization (ILO) has prioritized the protection of domestic workers' human rights against gender-based abuse. The International community has passed laws to combat sexual harassment in the workplace, providing a model for advancing the status of equality between men and women as an unalienable human right. Every workplace must have policies in place to address sexual harassment incidents.<sup>v</sup>

### ***Discrimination (Employment and Occupation) Convention, 1958***

The Discrimination (Employment and Occupation) Convention, 1958<sup>vi</sup>, addresses sex-based discrimination in the workplace and mandates that ILO member states announce and implement national policies that advance equality of opportunity and treatment with the goal

of eradicating prejudice. The Convention was adopted before the sexual harassment became a widely recognized problem. However, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) asserted that the Committee has consistently expressed the view that sexual harassment as a serious manifestation of sex discrimination and a violation of human rights, must be addressed within the context of the Convention<sup>vii</sup>. In addition, the Committee declared that laws against sex discrimination should not conflict with efforts to eradicate sexual harassment, which should be a fundamental component of any legislation or other policy.

The integrity, decency, and well-being of employees are all called into question by sexual harassment, which undermines workplace equality. By eroding the foundations upon which working relationships are established and reducing productivity, it harms an organization. The Committee has made progress over time in expressed the belief that sexual harassment should be dealt with within the context of the Convention because it is a serious form of sex discrimination and a violation of human rights. The Committee recalls its general observation underlining the significance of implementing appropriate measures to prevent and ban sexual harassment at work, given the gravity and significant effects of such behavior.

### ***Indigenous and Tribal Peoples Convention, 1989***

The only other Convention that mentions the outlawry of sexual harassment in the workplace is the Indigenous and Tribal Peoples Convention, 1989<sup>viii</sup>. According to the Convention, the obligation for developing coordinated and systematic action to uphold these peoples' rights and integrity rests with governments, who must enlist the help of the affected population.

The governments are required to take special measures to ensure the effective protection of workers from Indigenous and Tribal groups regarding recruitment and employment conditions, to the extent that such workers are not effectively protected by laws that apply to all workers. These measures must be adopted within the framework of national laws and regulations and in collaboration with the people concerned. It provides protection against sexual harassment and equal opportunities and treatment for men and women in the workplace for those who belong to these certain groups.<sup>ix</sup>

Since sex discrimination in the workplace was first recognized as sexual harassment, more and more nations around the world have passed anti-sexual harassment laws. Sexual harassment is seen as a crime and is forbidden, regardless of whether it is covered or governed by laws, such

as those against it, those promoting equality and non-discrimination, employment laws, criminal laws, or tort laws.

Deirdre McCann claims that adopted ways are the most common. First off, without specifically mentioning "sexual harassment," several nations have classified particular forms of harassment as examples of other types of illegal behavior, such sexual assault or defamation.<sup>x</sup> Even before there was a general understanding of the many different forms that sexual harassment may take, this strategy was popular in many jurisdictions. Second, courts and tribunals in a number of nations have specifically referred to and recognized sexual harassment as a specific instance of a more general category of unlawful behavior. It is typically considered to be a form of sexual discrimination and is therefore illegal under equality or anti-discrimination laws. Finally, legislation specifically banning workplace sexual harassment has been passed by legislatures or changed by doing so.

D. McCann further suggests that many legal branches within the same jurisdiction may deal with sexual harassment. For instance, sexual harassment is expressly prohibited by both labor law and human rights law in Canada and New Zealand, and in those nations where, although it is expressly forbidden by law, cases of sexual harassment may also be filed under other areas of the law. While sexual harassment claims in Japan can be made under both tort law and equality law, criminal law measures have been invoked in the Netherlands notwithstanding particular labor law requirements.

### ***Violence and Harassment Convention ,2019***

The Violence and Harassment Convention 2019<sup>xi</sup> is the first international standard that strives to abolish violence and harassment at work by defining and recognizing a future where everyone may work with dignity and respect without fear of harassment or violence.

International Labor Organization Convention 190 (ILO C190) is groundbreaking because it substantially closes the regulatory gap on workplace sexual harassment over the world. It acknowledges that workplace harassment and violence pose a danger to equal opportunity, violate human rights, and are inappropriate and inconsistent with decent work.<sup>xii</sup>

According to the Convention, violence and harassment are "a range of unacceptable behaviors and practices" that "aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm," using a pragmatic approach to its definition. This may include, among

other things, sexual harassment, threats, stalking, bullying, physical and verbal abuse, and other forms of abuse.

ILO C190 adopts an inclusive and comprehensive stance in its area of protection by using a wide definition of the 'worker'. The formal and informal economies, rural and urban locations, and all sectors, acquires a uniform shelter under the Convention. Irrespective of their contractual position, the Convention equally protects all workers and employees.

The range of protection includes job searchers, volunteers, interns, apprentices, and employees whose employment has been terminated. It acknowledges the possibility of violence and harassment against those acting in the capacity of an employer in carrying out their authority, obligations, or responsibilities.<sup>xiii</sup>

The Convention also states that third-party violence and harassment, whether it involves patients, clients, customers, or the general public, must be considered and addressed with strong and robust protection for those whose experiences of violence and harassment are made worse by discrimination and inequality.

## **INDIAN PERSPECTIVE**

According to Article 14 and Article 21 of the Constitution of India, sexual harassment violates a woman's fundamental rights to gender equality and the right to life and a dignified existence. As we can observe here that the Indian legislation only address rape and sexual assault of women. There is no legislation or statute protecting men from the heinous act of harassment and rape. For example, Section 354 of the Indian Penal Code, 1860 (IPC) deals with "assault or criminal force against a woman with the intent to outrage her modesty" and Section 509 of the IPC deals with "word, gesture, or act intended to insult the modesty of a woman."

The Indian Penal Code, 1860 delegates the following actions by a male against a woman are considered to be sexual harassment in accordance with Section 354A.

- physical contact and approaches involving unwanted and explicit sexual overtures; or
- demand a sexual favor; or
- displaying pornography against the woman's will; or
- making comments with a sexual undertone,

will be prosecuted as a crime of sexual harassment against women.



For the aforementioned offences, the penalty ranges from one to three years in prison, a fine, or both.

***The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013***

In India, the law titled Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was created to safeguard women against sexual harassment at the workplace. The legislation was approved by the Lok Sabha on September 3rd, 2012 and on February 26, 2013, the Rajya Sabha approved it. The Bill received the President's approval on 23<sup>rd</sup> April, 2013 and the Act became effective on December 9, 2013.

This Act grants women the right to protection from sexual harassment and works towards preventing and addressing the problem.

While sexual harassment violates a woman's fundamental right to gender equality under Article 14 of the Indian Constitution and her right to life and a dignified existence under Article 21 of the Constitution, which also includes a right to a secure workplace free from sexual harassment.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the Government of India has ratified, recognizes the right to be protected from sexual harassment and the right to a job that is done with dignity as universal human rights.

Additionally, considering that the Supreme Court issued directions to handle sexual harassment until the appropriate law is passed in this regard in *Vishaka v. State of Rajasthan*<sup>xiv</sup>. The Supreme Court of India established a definition of sexual harassment in *Vishaka v. State of Rajasthan* (1997), which is used in the Act, it is defined under Section 2(n) as, "*sexual harassment*" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

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

The Indian Constitution's Article 19(1)(g) provides that every citizen has the right to pursue their own trade or business or has the right to be employed in any profession of their choice. In *Vishaka v. State of Rajasthan*, it was determined that violations of the victim's fundamental rights under Article 19(1)(g) include both the rights to "gender equality" and "life with personal liberty." According to the case judgement, sexual harassment is not merely an issue of personal hurt because it also infringes a woman's rights to work as well.

The Act mandates the employers and local governments to establish grievance committees to investigate all complaints of the aggrieved parties, which also covers patients in hospitals and students in schools and colleges. Employers who violate the law could be fined up to 50,000 rupees.

Due to its emphasis on women, the Act is biased towards a particular gender. Men and transgender are unable to seek relief under the statute's provisions since it does not list them as victimized parties.

There are very few cases of sexual harassment of men that have been reported or filed in India, but with the advancement of technology, education, and global information access, people are emerging from their shells and realizing the importance of sharing their experiences in order to uncover the tragedy and set themselves free emotionally, physically, and mentally.<sup>xv</sup>

According to the results of the Economic Times-Synovate survey, 19% of respondents from Pune reported experiencing sexual harassment at work, 51% of respondents in Bangalore and 28% of those surveyed in Hyderabad, respectively, reported having experienced sexual harassment. In several Indian metro cities, 38% of respondents claimed that "men are as vulnerable to sexual harassment as women" in today's workplaces.<sup>xvi</sup>

## **CONCLUSION**

Workplace sexual harassment has a negative impact on a company's productivity, staff retention, reputation, and legal responsibility. Under no circumstances sexual harassment should be permitted. Regardless of the perpetrator's age, gender, sexual orientation, or sexual identity, male colleagues must be similarly safeguarded from sexual harassment at work and informed of their right to report improper behavior. Male employees must be heard, believed in, and supported by their company when they have the courage to come forward and report

sexual harassment to management, regardless of any actual or imagined social stigma or stereotype.

Therefore, the major problem with sexual harassment is that it may happen to people of any gender. Equal protection under the law is the only way to ensure that everyone feels protected from the law. Laws must be gender-neutral if the crime is gender-neutral. The laws ought to reflect the equality with which women and men are treated in our society. The fair treatment of persons of all genders must be emphasized by the passage of laws that are gender-neutral and do not target a certain group of people in society. It takes a lot of courage for a man to speak up in a society where women are still reluctant to report that they have been sexually harassed, therefore he should feel just as comfortable coming out and objecting to the problems without worrying about being ignored. People do not, however, consider the difficulties that they experience since they believe that males are manly and strong enough to handle such issues.<sup>xvii</sup>

Men and women should be protected equally under the law, as everyone has the right to live without being subjected to harassment, regardless of gender. We need to create a setting that does not foster gender inequality. Only when males are granted equal rights and remedies for sexual assault and when we acknowledge that women are not the only ones who suffer from it, this will be achievable. While India enacted the Sexual Harassment of Women at Workplace Act, 2013, which recognized workplace sexual harassment for women ten years ago, India needs to grasp the ambiguity in the law and should revise the Act by adding the harassment of Men under the Act's jurisdiction. In addition to protect men against harassment, laws should be enacted under the Indian Penal Code, 1860 as well. The Constitution of India must guarantee all those who are susceptible to sexual assault effective protection. Only when a victim of sexual abuse reports the abuse, it will be possible to eradicate the societal stigmas associated with it and raise awareness of the issue. To eradicate the societal stigmas attached to them, men must also take a position, speak out, and express their complaints. But since sexual assault affects both men and women, it is important firstly for the society to acknowledge the fact and end the discrimination.

## ENDNOTES

<sup>i</sup> Kritika Kapoor, “Men too are victims of sexual harassment”, *The Times of India*, December 21, 2012, available at [http://timesofindia.indiatimes.com/articleshow/16336627.cms?from=mdr&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/16336627.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited on June 21, 2023).

<sup>ii</sup> Tanisha Srivastava, “Laws Against Harassment of Men in India”, available at <https://13angle.com/laws-against-harassment-of-men-in-india/> (June 18,2023)

<sup>iii</sup>Derek Smith Law Group, “How Do Men in the Workplace Get Targeted as Victims of Sexual Harassment?” available at, ([discriminationandsexualharassmentlawyers.com](http://discriminationandsexualharassmentlawyers.com)) (last visited on June 26, 2023).

<sup>iv</sup> Karan Arora, “Why India Inc. needs to protect Men against Sexual Harassment at Workplaces in India- case for gender neutral policies” available at, <https://www.ungender.in/why-india-inc-needs-to-protect-men-against-sexual-harassment-at-workplaces-in-india-case-for-gender-neutral-policies/>, ungender, (November 18, 2019)

<sup>v</sup> Romana Asmat & K, India Miss Sidra Mehboob, “International Laws and Policies for Addressing Sexual Harassment in the Workplace”, *International Research Journal of Interdisciplinary & Multidisciplinary Studies (IRJIMS)*, Volume-II, Issue-II, March 2016, Page No. 32-43

<sup>vi</sup> (No. 111)

<sup>vii</sup> International Labour Organization, “ILO Declaration on Social Justice for a Fair Globalisation” (Geneva, ILO, 2008).

<sup>viii</sup> (No. 169)

<sup>ix</sup> ILO C169 Article 20

<sup>x</sup> D. McCann, “Sexual harassment at work: National and international responses, Conditions of Work and Employment Programme”, *ILO*, 2005

<sup>xi</sup> (No. 190)

<sup>xiii</sup> ILO C190 Article 2

<sup>xiv</sup> 1997(7) SCC.323

<sup>xv</sup> Yogeethasai, “Harrasment on men”, available at <http://www.legalserviceindia.com/legal/article-3888-harassment-on-men.html> (last visited on June 26,2023)

<sup>xvi</sup> Editorial, “Even men aren’t safe from sexual harassment at workplace: Survey”, *The Economic Times*, August 22,2010

<sup>xvii</sup> *Saloni Chitlangi*, “Sexual harassment of men at workplace: need for a legal framework”, *iPleaders Blog*, November 10,2021