

SEXUAL HARASSMENT AT WORK PLACE¹

Abstract

With increased access to education and better employment opportunities, millions of women are entering their country's workforce. Globally, Many working women face sexual harassment, discrimination, and inequality in the work place. According to Australian Human Rights Commission Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

Sexual harassment at work place is the direct violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to live with dignity under article 21 of the Constitution. Therefore it is crucial that each country strives to eliminate work place sexual harassment since protection against sexual harassment and the right to work with dignity are universally recognised human rights by International Conventions such as Convention on the Elimination of all forms of Discrimination against Women which was ratified on the 25th June, 1993 by the Government of India. According to the Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013, it is mandatory for every organisation with 10 or more employees to set up an internal complaints committee (ICC).

My research paper will discuss the significance of this act and how it provides the fillip and direction to the efforts of corporate India to ensure an unbiased and gender neutral working atmosphere. It will discuss the steps that can be taken by an organisation to completely

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eliminate incidences of sexual harassment by setting a proper grievance redressal system which is also their legal obligation. The paper is also an attempt to discuss the issue in the international platform. The judicial insight through case laws on the topic will also be discussed.

Keywords : Sexual Harassment, Workplace, Complaint Committee, Grievance Redressal System

Introduction

The emotional, sexual, and psychological stereotyping of females begins when the doctor says, "It's a girl." - Shirley Chisholm (1924 - 2005)²

Our society has revolutionised in many ways over the 19th and 20th centuries. One such revolutionary change is the increased number of women who are the breadwinners of their household³. Women are becoming less and less economically dependent on men as a result of which there has been an upliftment in their socio-economic status. Such a transformation has not only challenged the mindset of the general public but also the orthodoxical norms of the society.

However where one could see many of the positive impacts ushering in, they are also some of the downsides which have been slowly realised. Such downsides are primarily the hurdles faced by the women in the workplace⁴: These hurdles based on gender discrimination at

² Volume No.1 MICHELE ANTOINETTE PALUDI, THE PSYCHOLOGY OF WOMEN AT WORK 12 (Michele Antoinette Paludi ed., Praegers Publishers, 2008).

³ David S. Pedulla & Sarah Thébaud, *Can We Finish the Revolution? Gender, Work-Family Ideals, and Institutional Constraint*, 80.1 American sociological review, 116–139 (2015).

⁴Caryl Rivers & Rosalind C. Barnett, *Getting in the door will be harder for a woman than it is for a man*, CT, May 18, 2016, at pg.4.

workplace is defined as Occupational Sexism⁵. Basically it refers to the discriminatory stereotypes surrounding women employees that exists in the employment sector.

One of the famous cases of U.S. Supreme Court related to Occupational Sexism is the *Price Waterhouse v. Hopkins*⁶:

Case Facts - Ann Hopkins was one of the outstanding employee in Price Waterhouse Company. Despite her stellar abilities she was not given promotion in the company to the position of a 'Partner'. Citing gender discrimination on part of her company, Ann Hopkins filed a case against the company for the practice of occupational sexism.

Court Decision - The U.S. Supreme Court granted the decision in favour of Mrs Hopkins who was finally given the partnership in Price Waterhouse Company on which she had the right and was also deserving candidate for the same.

Another famous case of U.S. Supreme Court is that of *Ledbetter v. Goodyear*⁷ :

Case Facts - Ms Lily Ledbetter filed a case in the court against her employer on the ground that she was being given very low pay in comparison to her male co-workers and that she was the victim of Occupational Sexism.

Initially the decision was not given in her favour as she filed the case after a long lapse of time which in the eyes of the law is questionable as the reasonable time to file a case of discrimination is considered to be of 180 days within the time of the happening of the incident and that law will help those who do not sleep on their rights but are vigilant enough to exercise them.

Court Decision - However Justice Ruth Bader Ginsburg favoured Ms Lily citing the fact that many a times women are not even aware of the prevailing discriminatory patterns until it's very late.

⁵ L.A. Gilbert et al., *Sexism and stereotypes in modern society: the gender science of janet taylor spence*.(Ed.), American Psychological Association (1999).

⁶ Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

⁷ Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007).

Some of these hurdles which are part of the Occupational Sexism have been discussed below:

- 1) **Gender Pay Gap** - In the Cambridge Dictionary, it has been defined the difference between the amounts of money paid to women and men, often for doing the same work⁸. Therefore it can be summarised that gender pay gap is depicted as a percentage of the men's earnings⁹. There are various reasons which can be cited as the major cause towards such an inequality in the pay structure like discrimination while hiring men and women, lower wages for female-dominated industries, difficulty to balance domestic life and caring which is unpaid for and last but not the least lack of facilities for women in workplace specifically in the case of the senior most employees
- 2) **Poor Security** - Women now represent a significant share of the working Population and hence it has become extremely important for companies and corporates to ensure that women employees have personal security which is integral their well-being. Here the paper not only focuses on upper class working women but also working women from poorer strata of the society. Even after recommendations on ensuring security of women employees have been given by Government Boards like Federation of Indian Chambers of Commerce and Industry, companies fail to implement those thus endangering the safety of women employees.
- 3) **Maternity Leave**¹⁰ - The recent legislation on the extension of paid Maternity Leave of upto 26 weeks proved to be a ray of hope prima facie however after this legislation, many companies are now hiring fewer female candidates for filling positions in the company so that they will have to pay very few select women employees only. This

⁸ *Gender Pay Gap*, CAMBRIDGE DICTIONARY (Dec. 22, 2017, 11:15 AM), <https://dictionary.cambridge.org/dictionary/english/gender-pay-gap>.

⁹ *The gender pay gap*, THE ECONOMIST (Dec. 22, 2017, 10:34 AM), <https://www.economist.com/news/international/21729993-women-still-earn-lot-less-men-despite-decades-equal-pay-laws-why-gender>.

¹⁰ *Gender-based laws: a double-edged sword*, LIVEMINT (Dec. 25, 2017, 8:15 AM),

<http://www.livemint.com/Opinion/OuDS7WADss4JWEyhnb0iDN/Genderbased-laws-a-doubleedged-sword.html>.

further would mean that women employees will be given low salary so as to compensate their cost by paying for maternity leave¹¹.

- 4) Sexual Harassment**¹²- The Equal Employment Opportunity Commission (EEOC)¹³ under the aegis of United Nations is responsible for enforcing Civil Rights with Respect to workplace discrimination. According to EEOC Sexual Harassment has been defined as an 'Unwelcome Sexual Advances, request for Sexual Favours, passing of sexually coloured remarks and/or any other verbal or physical form of Sexual Conduct' by one employee/employer towards another particularly women employees/employers¹⁴. Such a conduct usually happens by putting the victim under undue influence or fear and/or threat of being fired from the job that which can undermine the work performance of the victim. It adversely affects the physical and emotional well being of the victim¹⁵. Where on one hand the Government is helping women realise their independence and claiming to promote gender equality, at the same time companies and superfluous laws are perpetuating the male dominated customs by weakening the position of the women in the society.

Although when in a worldwide movement acts such as the Equal Pay Act of 1963¹⁶ and the Civil Rights Act of 1964¹⁷ were introduced, they came in force with promise of ensuring equal

¹¹TNN & Agencies, *Bill allowing 6-month maternity leave passed in RS*, TOI (Dec. 25, 2017, 10:45 AM), <https://timesofindia.indiatimes.com/india/Bill-allowing-6-month-maternity-leave-passed-in-RS/articleshow/53652957.cms>.

¹²*Equality Act, 2010*, LEGISLATION.GOV.UK (Dec. 25, 2017, 11:05 AM), <https://www.legislation.gov.uk/ukpga/2010/15/section/26>.

¹³*What is Sexual Harassment?*, UN (Dec. 25, 2017, 3:56 PM), <http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>.

¹⁴ BNA Communications, Inc., *Preventing Sexual Harassment*, 73 SDC IP(1992).

¹⁵ *Legal Definition of Sexual Harassment*, AUSTRALIAN HUMAN RIGHTS COMMISSION (Dec. 26, 2017, 8:59 PM), <https://www.humanrights.gov.au/publications/sexual-harassment-workplace-legal-definition-sexual-harassment>.

¹⁶ *The Equal Pay Act of 1963*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Dec. 26, 2017, 7:34 PM),

<https://www.eeoc.gov/laws/statutes/epa.cfm>.

¹⁷ *Title VII of the Civil Rights Act of 1964*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Dec. 26, 2017, 9:18 PM), <https://www.eeoc.gov/laws/statutes/titlevii.cfm>.

pay with no gender inequality, however the present scenario is contrary to the same. Therefore women besides going through the hardship of balancing their work and domestic life also have to face the above mentioned hurdles with no effective legal system or organization to address their problems. The mere existence of statutes cannot ensure the safety of women employees in the work environment.

Where such scenarios are occurring, it is advisable for all the organisations whether large or small in size to ensure an ideal workplace with utmost personal security of employees. An ideal work environment is described as the one where women employees are not discriminated and/or given fewer employment benefits as compared to their male counterparts.

It has been seen in practical instances that women often hide the fact that they have kids while in an interview. This itself signifies the magnitude of the problem. According to the statistics cited in a report on sexual harassment by the Trade Union Congress¹⁸ in association with Everyday Sexism Project¹⁹ suggests that sexual harassment is very humiliating both physically and emotionally²⁰. Their report says that more than half (52%) of the working women population have suffered from some kind of sexual harassment at their workplace. Also about 95% of women in the working sector have been subjected to sexually coloured remarks whether be it in form of jokes, comments or innuendos.

Despite going through all this hardship, women rarely raise their voice or they have to change their jobs because of sexual harassment and sometimes they even stay quiet, thus keeping the matter in dark mainly because of the fear of losing their jobs. According to another statistics cited in the report of the Slater and Gordon law firm²¹, those few women who raised their voice

¹⁸ Trades Union Congress, *Still just a bit of banter?* (Dec. 26, 2017, 11:54 PM), <https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>.

¹⁹ Alice Ross, *Half of women in UK have been sexually harassed at work, study finds*, THE GUARDIAN (Dec. 27, 2017, 7:45 AM),

<https://www.theguardian.com/lifeandstyle/2016/aug/10/half-of-women-uk-have-been-sexually-harassed-at-work-tuc-study-everyday-sexism>.

²⁰ Zoe Williams, *Sexual harassment 101: what everyone needs to know*, THE GUARDIAN (Dec. 28, 2017, 10:19 AM),

<https://www.theguardian.com/world/2017/oct/16/facts-sexual-harassment-workplace-harvey-weinstein>.

²¹ *Sexual Harassment Rife in the Workplace: New Study Reveals*, SLATER GORDON (Dec. 28, 2017, 12:56 PM),

against such inappropriate behavior of their male colleagues or tried reporting the incident were in fact put in a disadvantaged situation like not getting promotion. The matter is neither brought up nor discussed and is usually ignored.²²

This raises a serious question as to why there is an ignorance towards sexual harassment at workplace?

The important thing to realise here is that this matter is not something impossible to deal with. Stronger enforcement of laws to provide legal protection to the vulnerable workers together with a better redressal system to ensure justice should form the part of the solution. The following subsections of my research paper will scrutinize the matter in light to arrive at a resolution for the same.

Sexual Harassment at Workplace - International Perspective

It will not be out of the way to say that Sexual Harassment has become a worldwide rampant phenomena which prevents the women from breaking away the so called 'Glass Ceiling'²³ and advancing ahead of their male counterparts in the corporate organisation²⁴. On the global context, sexual harassment is the violation of human rights granted by the United Nations Charter. Therefore following the footsteps of the UN, more and more countries are realising the magnitude of the issue and henceforth are implementing such legislations which prevents any form of sex discrimination including workplace sexual harassment. It has been clearly mentioned in many of these legislations that sexual harassment whether at workplace or not will be considered as a crime.

<https://www.slatergordon.co.uk/media-centre/press-releases/2013/10/sexual-harassment-rife-in-the-workplace-new-study-reveals/>.

²² *Protection from sexual harassment*, TRADES UNION CONGRESS (Dec. 28, 2017, 2:54 PM), <https://www.tuc.org.uk/research-analysis/reports/protection-sexual-harassment>.

²³ *Glass-Ceiling*, CAMBRIDGE DICTIONARY (Dec. 28, 2017, 4:39 PM), <https://dictionary.cambridge.org/dictionary/english/glass-ceiling>.

²⁴ D.K. Srivastava, *Progress of Sexual Harassment Law in India, China and Hong Kong: Prognosis for Further Reform*, 51 HARVARD I.L.J. 175 (2010).

This subsection of the research paper will throw a light upon the various International Conventions which are under work to address the problem of Sexual Harassment at workplace and that how it can be eradicated from the work culture. Along with it judicial cases from around the world will be discussed to comprehend the subject matter at hand.

❖ **United Nations**²⁵

The United Nations has recognised sexual harassment including sexual harassment at workplace, educational institutions and elsewhere as a crime which is punishable. The UN has developed a framework which lays down such rights and principles which are also part of some of the major international instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁶

It is the Committee on the Elimination of Discrimination against Women (CEDAW) which has established itself as an expert on this matter. This committee is responsible for monitoring the measures implemented by those countries and states which have ratified this convention. In addition to this the committee also gives recommendations on the legal policies which should be adopted to protect women in their everyday lives particularly from sexual harassment at workplace.

❖ **United Nations Development Programme**²⁷

²⁵ *Committee on the Elimination of Discrimination against Women*, UN WOMEN (Dec. 28. 2017, 8:36 PM), <http://www.un.org/womenwatch/daw/cedaw/committee.htm>.

²⁶ UNITED NATIONS (Dec. 29, 2017, 11:14 AM), <http://www.un.org/documents/ga/res/48/a48r104.htm>.

²⁷ United Nations Development Programme, *Workplace Harassment & Abuse of Authority* (Dec. 29, 2017, 2:34 PM), http://www.undp.org/content/dam/undp/documents/about/transparencydocs/UNDP_Policy_on_Workplace_Harassment_and_Abuse_of_Authority.May_2012.pdf.

Under the UNDP workplace sexual harassment is intolerable. The UN Charter as well as the Staff Rules of the United Nations consider such behaviour or conduct as contrary to their regulations. Particularly the Rule 1.2(f) of the Staff Rules²⁸ clearly prohibits any form of gender discrimination at workplace. The UNDP also points out how abuse of authority to harass employees sexually is prohibited and against law.

❖ **International Labour Organization**²⁹

One of the major agency of U.N. which has enforced strict laws in the arenas employment and workplace is the International Labour Organisation. ILO has come up with many conventions which proved to path breaking in the context of addressing the problem of sexual harassment at workplace. One such major convention is the **Discrimination (Employment and Occupation) Convention (No:111)** which defines discrimination on the grounds of biasness or distinction made on the basis of gender which further restricts equal economic opportunity to the person victimized. Another major convention of ILO is the convention No:169 which is **Indigenous and Tribal Peoples Convention, 1989**³⁰. The convention seeks to prohibit sexual harassment at workplace. It also provides for provisions to prevent any kind of discrimination between workers.

❖ **Equal Employment Opportunity Commission**³¹

The Equal Employment Opportunity Commission (EEOC) established in U.S. is the expert body in dealing with workplace and employment sector issues. The commission has specifically laid down federal laws to make discrimination against a job applicant or an

²⁸ *Staff Rules*, UN HR PORTAL (Dec. 29, 2017, 4:46 PM), https://hr.un.org/handbook/staff-rules#rule_1_2.

²⁹ *International Labour Organization*, STOP VOILENCE AGAISNT WOMEN (Dec. 29, 2017, 6:18 PM), http://www.stopvaw.org/international_labor_organization2.

³⁰ *C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, INTERNATIONAL LABOUR ORGANIZATION (Dec. 29, 2017, 10:54 PM),

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

³¹ EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Dec. 29, 2017, 11:36 PM), <https://www.eeoc.gov/eeoc/index.cfm>.

employee as illegal. Also a person cannot be discriminated against if they have/are going through a lawsuit involving discrimination. The Equal Pay Act of 1963 and the Civil Rights Act of 1964 (Title VII) under the aegis of EEOC are also working on the same line that is to prohibit workplace harassment of women employees. Their various roles includes prohibition of gender based wage discrimination for the same set of skills, sexual harassment of women employees by a person in authority and prohibit all such unlawful employment practices which undermines the work performance of the victim.

U.S. has witnessed some of the most controversial cases in the history of Workplace Harassment. Some of them are discussed below:

Chopourian vs. Catholic Healthcare West

Case Facts³² - The plaintiff, Ms Ani Chopourian was a medical assistant at Mercy General Hospital in Sacramento who filed multiple complaints on the grounds of sexual harassment at her workplace. She alleged that many a times some doctors would pass her sexual remarks and even touched her inappropriately. However during her two year tenure she did not get the requisite justice. It was only in 2012 that the case was heard before a federal court in California.

Court Decision - The federal Jury of California awarded Chopourian with a sum of \$168 million and found the Doctors and other Male Medical Staff at the Catholic Healthcare West as guilty.

Gretchen Carlson vs. Roger Ailes

³²Kevin McCoy, *Sexual harassment: Here are some of the biggest cases*, USA TODAY (Dec. 30, 2017, 7:39 AM),

<https://www.usatoday.com/story/money/2017/10/25/sexual-harassment-here-some-biggest-cases/791439001/>.

Case Facts - Gretchen Carlson was the Fox News Network Host who filed a Lawsuit under Sexual Harassment at Workplace against the Former CEO of Fox News, Roger Ailes. She alleged that her contract was not renewed as she had raised her voice against the inappropriate behaviour of Roger Ailes. The case became the most controversial case in the history of USA.

Court Decision - The case was sought in the form of a settlement. The settlement was worth of \$20 million that had to be paid the Fox News Channel along with an apology to Gretchen.

Carla Ingraham vs. UBS Financial Services

Case Facts - The plaintiff was a senior client service associate at the company UBS Financial Services. She was a victim of sexual harassment at her workplace as one of her colleague a male broker she worked for used to call her by offending names of sexual natures and asking her for sexual favours. After facing such humiliation she filed a complaint. As a consequence to which her company fired her. She again sued against the company in court.

Court Decision - The state court jury found the company responsible on the grounds of harassing one of their female employees sexually. As a result Ms Carla was awarded \$10,592,000.

Linda Gilbert vs. Daimler Chrysler

Case Facts - The plaintiff claimed that she being the only female worker in the Chrysler's Jefferson North Assembly Plant in Michigan immediately became the target of sexual banter by her male co-workers who started harassing her. They used to pass her sexually coloured remarks and innuendos. When she filed a case against the company, the case dragged for seven long years. Even after that she continued to be humiliated at her her workplace.

Court Decision - On hearing Ms Gilbert's case, a state court jury awarded her \$21 million for her harassment claims. However, a twist came in this case when the Michigan Supreme Court overturned the ruling on the ground that the plaintiff party have used misleading arguments that have changed the direction of the case. This case is still pending in court.

EEOC has been adopted in other countries as well or have similar commissions to that of EEOC such as Canada, the United Kingdom, Australia, South Africa, and Israel.

❖ Human Rights Commissions

The **African Charter on Human and Peoples' Rights**³³ on the Rights of Women in Africa enshrines rules and regulations to ensure protection of women employees from all forms of sexual abuse at workplace and eliminate all forms of discrimination against women including restriction to equal economic opportunity to them.

Similarly, **Australian human rights commission** introduced the sex discrimination Act of 1984 which prohibits sexual harassment whether at workplace, educational institution or elsewhere. This commission has witnessed several cases on the issue of sexual harassment at workplace including one *Bennett V Everitt* where it was held that all employees regardless of their gender have the right to employment without direct and/or indirect attempts to sexuality. "all employees have a right to employment without sexuality or attempts at the introduction of sexuality, either direct or indirect." ³⁴

Another example is the case of *Horne v Press Clough Joint Venture*³⁵. The case came before the Equal Opportunity Tribunal of Western Australia. The plaintiff in the case was a victim of hostile work environment and cited sexual humiliation as cause of her distress. The tribunal in this case held that it is the responsibility of the employer to maintain an ideal and safe work environment at the organisation where women employees feel protected against any form of sexual harassment.

Another famous case is that of display of *Freestone v Kozma*. The case helped in setting an outline as to what all kind of acts/conducts/behaviour should be considered in the ambit of sexual harassment at workplace. obscene or pornographic materials, general sexual banter,

³³ African Union, *Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa*, REFWORLD (Dec. 31, 2017, 12:34 PM), <http://www.refworld.org/docid/3f4b139d4.html>.

³⁴ *Bennett V Everitt*, EOC 92-244 at 77,280 (1988).

³⁵ *Horne v Press Clough Joint Venture*, EOC 92-556, 594(1994).

crude conversation or innuendo and offensive jokes. The Human Rights and Equal Opportunity Commission in its report of the case stated that sexual harassment at workplace can include other conducts besides physical acts such as passing sexually coloured remarks, sexual innuendos or sexual suggestion or embarrassment along with displaying inappropriate public display of sexuality.³⁶

In *G v R and Department of Health, Housing and Community Services*, it was held that whether the sexual harassment at workplace is being directed against specific employee or not, it will still be considered as a crime as such acts not only a hostile work environment is permeated but also it affects their dignity and humiliates the employees emotionally and physically.³⁷

Sexual Harassment at Workplace - Indian Context³⁸

India has come a long way where Rights of the Women are concerned. Starting from a number of amendments in the Criminal laws in the year of 2013, the government of India on every step has ensured that the Indian Women are protected against any kind of sexual Harassment. In fact the very essence of our Indian Constitution that is 'Rule of Law' ensures Law is above and all and every citizen of India shall be treated equally. Also the Fundamental Rights enshrined in the Part III of the Constitution ensures that women get the equal economic opportunity as men and are not discriminated in the matters of wage payment, education and work.

However despite having a strong legal framework, the government has not adopted a proactive strategy to deal with the situations before hand. It is only when the matter becomes rampant that the government takes an action. Rather than adopting the "Precaution better than Cure" model, our Governing system is dependent on the "Prevention better than Cure" model. The problem with the later model is that rather than making the country immuned to an endangering issue, it soughts the problem and then takes action. My research paper thus aims at emphasising the point that if the country and its citizens are already prepared for a possible

³⁶ Freestone vs kozma, EOC 92-249, 77,377 (1989).

³⁷ G v R and Department of Health, Housing and Community Services, HREOCA 20 (1993).

³⁸ Arun Kumar Singla, *Sexual Harassment of Women at Workplace in India*, 1.4 IJASPM, 58, 60-61 (2015).

mishappening in future, then it can be dealt better and that the number of victims will also reduced.

As far as the subject matter of this paper is concerned, before the enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013³⁹, there were no specific laws in India to deal with the issue of sexual harassment of women at workplace. But it was the case of *Vishaka v. State of Rajasthan*⁴⁰ which for the very first time brought the rampant problem of Sexual Harassment of women at workplace in front of the Indian Government. In the said case a women called Bhanwari Devi was a social worker in Rajasthan. During her course of work she came across a Rajasthani Thakur family who were getting their girl child married. Bhanwari Devi with the noble effort to prevent the child marriage, tried to stop the family from getting their infant daughter's marriage. However her efforts were futile and the thakurs of that family with the motive to take revenge from Bhanwari Devi, gang raped her. The incidence took place in September 1992. Not only she and her family was humiliated by the villagers but they also boycotted her and the police officers instead of helping her, they taunted her and did not file the charge against the thakurs. It was then that with the determination to get justice, Bhanwari Devi led a countrywide campaign and in this process she inspired many women across the country who had faced sexual harassment at their workplace in past but did not report it out of fear and it was now that they gathered courage to fight against a country wide rampant issue. As a consequence women's groups and NGOs filed a Public Interest Litigation (PIL) in the Supreme Court of India under the name 'Vishakha'. In their suit, the women groups had asked for justice for Bhanwari and enforcement of strict laws against workplace sexual harassment in India.

The Supreme Court in its judgement referred to Articles 14, 15, 19(1)(g) and 21⁴¹ of the Constitution of India and held that these articles provides safeguards against sexual harassment . Further as a result of this case, Supreme court on 13th August 1997 came up with **Vishakha**

³⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, 2014 (India).

⁴⁰ *Vishaka v. State of Rajasthan*, A.I.R 1997 S.C. 3011 (India).

⁴¹ INDIA CONST. art. 14-21.

Guidelines.⁴² These guidelines along with section 354 and section 509 of the Indian Penal Code were referred for any case that was in relation with sexual harassment women at workplace.⁴³

The Vishakha Guidelines were superseded by **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**. The act got assent from Lok Sabha on 3rd September, 2012 and from Rajya Sabha on 26th February, 2013 which was followed by the enforcement of the Act from 9 December 2013.⁴⁴ The Act was brought in force by the Government of India to provide protection against sexual harassment of women at workplace and prevent any such inappropriate behaviour by an employer towards any women employee as well as provide an effective grievance redressal mechanism for the prevention and redressal of complaints of sexual harassment along with matters connected therewith or incidental thereto.⁴⁵

However even after the enforcement of the said Act, the situation for working women in India has not improved. The Act requires the Indian Employers to implement the law in their respective firm/organization/company or any such workplace where more 10 employees are being hired. The Union Minister of Women and Child Development, Ms. Maneka Gandhi has said while addressing a press conference that those organisation which does not have Any organisation that does not have a sexual harassment committee will face serious legal action.⁴⁶

⁴² *Vishakha Guidelines agaisnt Sexual Harassment at Workplace, IITG (Dec. 31, 2017, 6:36 PM)*, http://www.iitg.ac.in/iitgicc/docs/Vishaka_Guidelines.pdf.

⁴³ The Indian Penal Code, 1860, No.45, 2017 (India).

⁴⁴ PTI, *Law against sexual harassment at workplace comes into effect*, TOI, Dec. 13, 2014, at pg 4.

⁴⁵ *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, THE GAZETTE OF INDIA (Dec. 31, 2017, 10:53 PM), <http://www.iitbbs.ac.in/notice/sexual-harrasment-of-women-act-and-rules-2013.pdf>.

⁴⁶ Amrita Madhukalya, *Serious legal action against organisations without a sexual harassment committee, says Maneka Gandhi*, DNA INDIA (Jan. 2, 2018, 9:36 AM),

<http://www.dnaindia.com/india/report-serious-legal-action-against-organisations-without-a-sexual-harassment-committee-says-maneka-gandhi-2019478>.

The Federation of Indian Chambers of Commerce and Industry (**FICCI**) and Ernst & Young (**EY**)⁴⁷ have reported that very few multinational companies in India have adopted the law and very few firms have shown any compliance to the act. According to a statistics in their joint report which was published in the year 2015, it was found that around 25% of Multinational Companies and 36% of Indian companies have still not mandated the laws given under the 2013 Act. It has been also found that majority of women who face sexual harassment on a daily basis at their workplace don't file any complaint against it as either they are afraid to lose their job or there is no Internal Complaints Committee (**ICC**) set up by their workplace organisation.

The next subsection of my research paper will discuss the importance of setting up an Internal Complaints Committee (**ICC**) by an employer in his/her organisation and the need for an effective Grievance Redressal System.

Grievance Redressal System

The problem of sexual harassment at workplace has now become a global problem over the years. It is prevalent at almost all levels of organisation whether corporates or education specific institutions. As discussed in the earlier sections, the mere existence of conventions and legal statutes will not resolve the problem in sight for it has now become rampant. Hence the need of the hour is to enforce the laws even more strongly and strictly which could create a deterrence among the workers so that they don't behave inappropriately with women employees⁴⁸. The culprits who harass and take the undue advantage of the women employees will only stop at when there is fear of legal consequences among them for committing sexual harassment with any of their female colleague or subordinate.

It has been seen that women who are victims to sexual harassment, sexually coloured remarks or innuendos usually do not report the incidence. Some of the reasons behind this increasing

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⁴⁷ FICCI & EY, *Fostering safe workplaces*, FICCI (Jan. 2, 2018, 3:45 PM), <http://ficci.in/spdocument/20672/Fostering-safe.pdf>.

⁴⁸ Katie Bethell, *One way to tackle sexual harassment at work: better parental leave*, THE GUARDIAN (Jan. 2, 2018, 4:46 PM),

<https://www.theguardian.com/us-news/commentisfree/2017/dec/12/how-better-parental-leave-can-reduce-sexual-harassment-at-work>.

phenomena is mainly the fear of losing their job and/or there is no separate department at their workplace which specifically deals with problems of such nature⁴⁹.

Therefore it has now become increasingly important that corporate organisations hiring more than 10 employees should set up a **Grievance Redressal Committee**. Such a committee should be flexible and spontaneous in their work. The Committee should be vigilant towards complaints registered with them and should conduct a thorough investigation on the same⁵⁰. During such an investigation the committee should make efforts to protect the working rights of the female complainant and ensure that she does not face any repercussions as a consequence to her complaint from the culprits. The 2013 Act which provides for protection and prevention of sexual harassment of women at workplace has a law on setting such a redressal system called the **Internal Complaints Committee**⁵¹. Such committee will be led by a presiding officer who shall be preferably a senior women employee of that company. Besides a Presiding Officer and other such women members, the Committee panel shall have one member who is part of a Non-Governmental Organisation (NGO) which deals with or /and have knowledge of issues in relation to sexual harassment of women. The reason behind making it mandatory to have a third party member on the panel of Internal Complaints Committee is to prevent the undue influence of from employees having higher authority in the company⁵². It is important that every such committee constituted in an organisation should function in compliance to the guidelines of the 2013 Act.

⁴⁹ Michelle Chen, *Stopping Sexual Abuse on the Job Begins With Empowering Workers*, THE NATION (Jan. 2, 2018, 7:35 PM),

<https://www.thenation.com/article/stopping-sexual-abuse-on-the-job-begins-with-empowering-workers/>.

⁵⁰ Sean Rossman, *How to shut down sexism in the workplace*, USA TODAY (Jan. 2, 2018, 11:56 PM),

<https://www.usatoday.com/story/news/nation-now/2017/10/11/how-shut-down-sexism-workplace/753095001/>.

⁵¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, 2014 (India).

⁵² Press Information Bureau, *Constitution of Internal Complaints Committee mandatory for all organisations of State/Central Government and private sector*, Dec. 11, 2015.

Following the 2013 Act, Government organisations in India such as FICCI⁵³ have come up with security reforms and recommendations for Businesses which aims at maintaining the personal security and well being of women employees. According to the research conducted by the **Bombay Stock Exchange (BSE)** surrounding the issues of sexual harassment at workplace, it concluded that following the 2013 Act, there has been recorded an increase in the number of complaints by female employees regarding harassment and humiliation at their workplace. They also found that more and more number of women employees are now raising their voice against such unjust attitude at their workplace. The research covered a wide range of organisations from corporates to even the Banking sector. The report on the same was published by the LiveMint via Mint Research⁵⁴. Even companies like *Godrej* are setting an example by coming up with their own set of policies to prevent sexual harassment at workplace⁵⁵.

Last but not the least, another most important way to curb the problem of sexual harassment at workplace is by making the women employees more empowered and aware of their workplace rights. This can be done by providing training and workshops to working women and conducting one to one counselling sessions which can help in identifying the loopholes in the workplace security management of the company and further it will boost the confidence of those women employees as they would relatively feel safe in their working environment. However, in order to completely unroot the problem of sexual harassment of women employees at a workplace, organisations will need to unroot the deeply rooted problem of Occupational Sexism everywhere in the world.

Conclusion

⁵³ FICCI, *SAFETY OF WOMEN AT THE WORKPLACE - Recommendations for Businesses*, FICCI (Jan. 3, 2018, 2:34 PM), <http://ficci.in/SEdocument/20249/Safety-of-women-at-workplaces-Recommendations-for-Businesses.pdf>.

⁵⁴ *What does data say about sexual harassment in India's top companies?*, LIVEMINT (Jan. 3, 2018, 9:39 PM), <http://www.livemint.com/Companies/wLYIP2JEyNHUPBEGNJenkL/What-does-data-say-about-sexual-harassment-in-Indias-top-co.html>.

⁵⁵ Godrej, *POLICY ON PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE* (Jan. 4, 2018, 3:34 PM), <http://www.godrejandboyce.com/godrej/godrejandboyce/pdf/Workplace.pdf>.

Women always have to struggle to get equal rights and opportunities as men. Whether it is from getting the right to work to getting an equal wage. However due to the deep rooted gender stereotypes in our culture and society, women are still treated as less in comparison to their male counterparts. At workplace, a women has to go through occupational sexism which is prevalent not only in India but also in countries like U.S.A , Australia, Africa and so on. Occupational Sexism includes gender pay gap, sexual harassment at workplace and poor security of women employees. It has now become a global problem. Sexual harassment at workplace not only affects the victim but it also brings shame and distress for the organisation as it is a clear proof of their fault in ensuring the personal safety of each and every women working in their company. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act which came into force in 2013 has given an exhaustive definition of Sexual Harassment at workplace which covers a wide range of behaviors that are inappropriate in nature like unwanted flirting, sexually coloured remarks, unwelcomed sexual contact, asking for sexual favours and making sexual advances. From the study depicted in this research paper, it is clear that sexual harassment can take the form of humiliation, intimidation or abuse from a superior or co-workers towards a female employee. And this is the number one reason cited for why women have to frequently change their jobs or leave it because they couldn't stand the suffering anymore. Further this rampant problem also contributes towards the low economic status of women in India. Also in such incidences, it is not the culprit but the women who faces the grave repercussions of the act. For instance her family will also have to go through the same humiliation and further also poses hurdle in their marriage. Thus the victim has to suffer it alone and in silence. Sexual harassment in the workplace should therefore be regarded as a serious matter and should be tackled more effectively.

In order to address the issue, a plan of action is required. Besides the setting up of a grievance system as has been already discussed in the previous sections of the paper, It is important to increase the awareness of both male and female employers and employees on the existence of forms of sexual harassment at the workplace as well as the steps that can be taken by them at their individual level to curb it. Further it is important that companies hiring more than 10 employees make efforts on providing training and workshops to it's employees on the background of sexual harassment, legal framework for redressal and self defense techniques for them. Experts from legal background having experience on dealing with issues related to sexual harassment at workplace can be asked for providing guidance for designing the

handbook on the same which should be given to each and every employee before their start of work in that company. Besides these efforts, the companies should have a counsellor on board who can advise and help those who are in distress or are suffering from harassment but are too afraid to raise their voice against it. Such a counsellor should be third party so as to prevent any undue influence from a higher authority in the company.

From the future perspective, besides the existence of the already enacted act on sexual harassment, there is a requirement for the stronger enforcement of the said legislation so as to create a positive environment at the workplace and prevent sexual advancement in any form which will create a more safe and healthy working environment.

