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# LEGAL CONTRIVANCE FOR DEFENSE OF WOMENFOLK

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**Abstract:** Sexual Harassment is something that haunts each and every woman. This paper focuses on what was and what is the status of women in India, the number of complaints that are registered every year and the history of enactments for Sexual Harassment Law in India and internationally. Women are continuously oppressed by someone in power, mostly men and women are fighting for the same till date in spite of the upliftment and empowerment.

**Keywords:** Sexual Harassment, Patriarchy Oppression, Feminism.

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**Introduction:** The demand for legal rights has long been a cornerstone for women's movement in India. Social reformers and the activists in the contemporary women's movement have all fought for women's rights and law reforms. These activists in India have all challenged those laws which are against women and also demanded for equal laws for both men and women. It has been these women's rights and equal rights that have given the women's movement a more of a political character. Many of these political campaigns were a success as the State has made effort in enacting a new legislation.

Literature on women and law began to emerge in the 1980's in India. Books and articles began to appear, documenting women's legal status, some arguing for reform, others celebrating their past achievements. The evolution of women rights can be divided into three phases, where the first one being in the mid-19<sup>th</sup> century where they challenged sati system, the second being pre independence movement where Gandhi encouraged women to participate in Quit India movement and the third phase being cultural discrimination against women and fighting for the same.

The dimension of women's employment underwent a critical transformation in India in the post liberalization phase in the later part of 1990's. Since past many social practices have been imposed on women and we have not been considered by the law to be based on our sex. Sexual harassment has not only been legally allowed; but has been legally unthinkable. Sexual harassment has neither appeared incidental or tangential to women's inequality. Though violence in India has increased in India, the law and criminal justice system has failed to handle such matters. The rate of reporting of convicts is very less in India. There has been very little effort in making the laws very much sensitive in such areas in India.

The feminist definitions of sexual harassment centers on the patriarchal constructions of gender and sexuality within the context of broader systems of male power, and the focus is on the harm that sexual harassment does to women as a group.

**Status of women:** The most primitive idea that exists about women shows her as a package of evil doings. Pandora, the mythological character of ancient Greece makes us wonder and question about how women have featured under the yoke of ancient civilization and culture. But the question is what about women today? What is the position of women in this age of modern world? Does she fare any better than in ancient Greek, Roman, Arab or Indian counterpart? Has she been in deliverance? Has she been able to get freedom in what she deserved for?

Unequal status of women being offensive and human dignity and violations against women has been a fundamental crisis today and India is no exception to this, despite of social status for women, social reform movements and constitutional provisions for the same and they still continue to suffer from inequalities. The enactment of National Commissions for Women Act, 1990 was, therefore, a time step to ensure speedy and even development for women.

A woman has been important specie as of man in the development of the humanity propagation of the human race and social economy, yet she is considered to be inferior to men. In the words of Gobbin, the spirit of ancient laws was so stern and haughty that the women were condemned to the perpetual tutelage of persists husbands on guardians, a sex created to persists and obey was never opposed to have attained the reason and experience.

In the most magnificent and civilized empire of Rome, the women was completely dependent; on marriage she would be a property of her husband. In fact, to put it in better words she was a slave to her husband and as well as his property. Romans did not allow women to exercise any civil or public rights that were given to them. She could not adopt, she could not give surety to anyone and she was not allowed to tutor anyone. The condition in other civilized societies was no better than Rome. The condition of women in Athens, Persia, Egypt and Babylonia was the same.

Hindu laws and customs too were extremely unfavorable to women; Manu has stated that day and night women must be held by their protectors in a status of subjection. The traditional society in India was dominated by men. But, if we look back into history we can clearly see to that India was matriarchal society, not a patriarchal society. Among this patriarchal society the laws of inheritance has inflicted upon women. In addition to this, another custom like female infanticide in the northern region and prohibition relating to pratiloma (a lower caste marrying a higher caste) lowered down the status of women under Hindu law.

It was only after civilization that the existence of women improved and man's control gradually removed. The process of emancipation begins with the man being prohibited to treat the wife as a chattel by selling or killing her. After sometime, man was prevented from repudiating validly married women unless there was a concrete cause.

Every human being is born free, but the women's freedom has always been neglected in the name of custom, honor, family welfare and social prestige. The Vedas, Upanishads and the Smritis constitute the Aryan Culture.

Manu Smriti (200 B.C) prescribes duties and obligations for a wife towards her husband who includes, "even if the husband is immoral and debauch and lacks good qualities, the wife must still worship him as if he were God himself. Any wife who rejects and disregards her husband, when he is immoral or a drunkard is excommunicated for three months by being denied costly clothes and jewels. Women need not perform any ceremony for undertaking any path for salvation. She will attain better life by service to her husband only. In the Vedic period, widow marriage seems to have been allowed, but during smiriti period, widow remarriage was prohibited. Sapthapadi is considered to happen only once in a women's life therefore, she shall never remarry, she was considered fit for niyoga.

In ancient India, the position of women has been said to be fair. The same was the position during the Vedic period but by the end, the condition deteriorated. The instances disclose the blood curdling account of a father ordering his son to chop his mother's head with an axe. We also find how a prince vowel is celibacy carried away three princely sisters to be married. With the result one of them burnt herself to death. Even in historic times, there is an instance of princely father dedicating his daughter to the temple for service. We won't be justified that ancient Indian womanhood lines a barbarous society whether the husband father as even the son could be cruel. It has been claimed that in the ancient period woman were treated better, but in the medieval period this statement can be withdrawn.

### What is Sexual harassment?

In simple words, sexual harassment at workplace is an act or a pattern of behavior that compromises physical, emotional or financial safety and security of a woman worker. Legally speaking, sexual harassment includes such unwelcome behavior as:

- a. Physical contact and advances;
- b. A demand or request for sexual favor;
- c. Sexually colored marks;
- d. Showing pornography;
- e. Any other unwelcome physical verbal or nonverbal conduct of sexual in nature.

Sexual harassment was not originally conceived as a separate offence in the Indian Penal Code. The question drew its attention first in the year 1997 in India. The credit goes to this NGO, called Vishaka, and took a case of gang rape in Rajasthan to the Supreme Court challenging the Rajasthan High Court verdict [1].

While the hearing of this case the Supreme Court noted a lack of legal recourse against sexual harassment at workplace. The Supreme Court defined what would constitute sexual harassment at workplace and issued guidelines that were to have statutory value until a proper law was enacted by Parliament.

Before the Supreme Court of India set the law against sexual harassment at workplace in order, such cases were dealt under IPC Section 354: outraging the modesty of women and Section 509: using a word, gesture or act intended to insult the modesty of a woman.

In the concerned case, a Rajasthan government employee with the Women's Development Project was gang raped for campaigning against stopping of child marriage. The powerful landlords of the village, not very far from Rajasthan's capital Jaipur, were accused of perpetrating the crime as they were engaged by the 'guts' of a 'lowly-born women' who opposed marriage of Gurjar family. This incident happened in the year 1992 and both the trial as well as the High Court found the accused as not guilty.

A group of activists, under Vishaka, moved the Supreme Court in 1997. And, the sexual harassment at workplace got a definition in India. It later took another 16 years for the Parliament to replace the Vishaka guidelines with a law called, the Sexual Harassment of Women t Workplace (Prevention, Prohibition and Redressal) Act, 2013

**Proceedings of the International Tribunal:** There are millions around the world who have not heard about the International Tribunal on Crimes against Women. Independently of governments, political parties, or any other existing institutions, it brought women together from various parts of the world to testify against violence and oppression and to denounce abuse of women in many forms. Organized on atiny budget, by women who earn very low income, over 2000 women from 40 countries all over the world came together, raised money on their own to go to Brussels because they wanted women's voice to be heard internationally. These women recalled painful memories and shared strategies, they argued over procedures and politics, they laughed and cried and planned for the future. They made a history. The first International Tribunal on Crimes against Women, which took place at the Palais des Congress in Brussels, Belgium, from March 4 to 8, ending on International women's day, 1976.

The first ever recognized case on sexual harassment in which women lost their jobs because they rejected sexual overtures from their employers [2]. This is the type of sexual harassment that became defined as *quid pro quo sexual harassment* meaning that a job or educational opportunity is conditioned on some kind of sexual performance. Such coercive behavior was judged to constitute violation of Title VII of the 1946 Civil Rights Act. Soon it was recognized in the employment law that pervasive sexist behavior from coworkers and create a hostile environment for the employees and also constituted illegal discrimination [3]. These two basic forms of sexual harassment, quid pro quo and hostile environment

was summarized in the guidelines that was issued by the Equal Employment Opportunity Commission in 1980 (USEEOC 1980).

Hostile work or educational environments can be created by behavior such as addressing women in crude or objectifying terms, posting pornographic images in the office or making any derogatory statements against women. Hostile environment may also include forced to kiss someone and forcibly asking on dates even if no quid pro quo is involved [4].

**Sexual Harassment: Report:** Most of the women wish to choose whether, when, where, and whom to have sexual relationships with, but sexual harassment denies this choice in the process of denying the opportunity to study or work without being subjected to sexual exactions. An objection to sexual harassment at work is not neo puritan moral protest against signs of attraction, display of affection, compliments or touching on the job. Instead, women are rattled and often angry about sex that is one sided or unwelcomed. When something women wants to turn off but cannot as that person may be in the power to hire or fire. Women who have fought against sexual harassment at work are resisting economically enforced sexual exploitation.

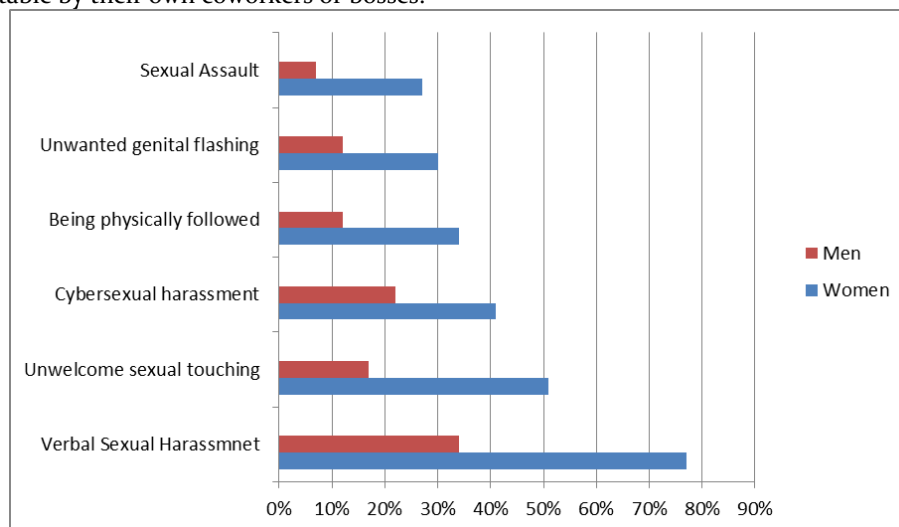
One in every 20 women would have experienced sexual harassment in workplace. Back in 2017, women took to social media to share their experiences of sexual harassment. The #MeToo movement went viral, spurring a national and global discussion on the issue. Many women due to this movement have come forward with their experiences of being sexually harassed either by their co-employee or their employer or also by influential men in the entertainment industry and Medias. And yet, there has been a little data collected on the national prevalence of sexual harassment, said by Michele Decker, director of the women's health and rights program. As a result, many people have asked "where is the evidence?" she said.

An online survey was launched in the month of January in the year 2019 by a nonprofit called Stop Street Harassment offers some of that missing evidence. It was found that 81% of women and 43% of the men has experienced some sort of sexual harassment during their lifetime.

More than 3 out of 4 women have been verbally harassed.

Source: Stop Street Harassment (all over the globe)

In the Fig. below it shows about how many women and men have been sexually harassed at workplace. Almost 80% of women are verbally harassed at workplace, at around 52% women experience unwelcome touching and around 30% of women have experience genital flashing. Women at workplace are made uncomfortable by their own coworkers or bosses.



The National Crime Records Bureau (NCRB) has started collecting data regarding sexual harassment at workplace under the category of insult to the modesty of women under section 509 of Indian Penal Code at office premises since 2014. A total of 57, 119 and 142 cases were registered during the year 2014, 2015 and 2016 respectively under this.

In so far as the complaints registered with the National Commission for Women (NCW) are concerned, there is increase in the number of complaints registered under the category 'Sexual Harassment at Workplace'. The data registered number of complaints during the last three years which is given below:

| Year         | 2016 | 2017 | 2018 |
|--------------|------|------|------|
| No. of cases | 539  | 570  | 965  |

During the beginning year i.e., in the month of January, 2019 there were already 29 cases registered. The Ministry of Women and Child Development, Government of India has developed an online complaint registration system titled Sexual Harassment Electronic Box (SHe-Box) for registering complaints relating to sexual harassment against women in workplace [5].

The NCRB data highlights that sexual harassment is a risk in all facets of life: in shelter homes, in the workplace, in home, on public transport. As a case in point, last year, BSE 100 companies witnessed a fourteen percent increase in sexual harassment cases.

The Vice President of human resources management at Tata Steel, Suresh Tripathi said "Women are prompt these days to report any case of sexual misconduct and it is the responsibility of the organization to take speedy actions". He also adds, "Increased reporting is a good start with as it means there is more awareness". There is 54% increase in reporting of sexual harassment cases in India from 2014 to till date and it makes it clear that there is good amount of awareness among women.

**Conclusion:** Mere enactment of these laws has created awareness among people and the number of complaints is increasing but the women should come out of the shell and explore the world. This is just the beginning and we have a long way to go, it is not easy to stop sexual harassment, but it has to be curbed and oppressing women at workplace must be stopped by misusing their dominant position.

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