

## GENDER-NEUTRAL LAWS: NEED OF THE HOUR

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**Nidhi Majethia\***

### ABSTRACT

*In India, everyone is facing sexual harassment irrespective of gender, and age. It would be unfair to say that the victim can only be a female. The victim of this harassment could be any person but the pseudo-feminists present in our society try to target only men and not women. It is crucial to realize that the times have changed and that everyone is treated equally under the Constitution of India. This Short article will try to elucidate the laws which are only meant for women ignoring men which give unfair access to justice to men. These laws which are only provided to women should be made gender-neutral to provide equal justice to both genders without any discrimination.*

**Keywords:** Sexual Harassment, Gender-Neutrality, Justice.

### INTRODUCTION

Sexual harassment in general terms can be defined as improper behavior, unwanted sexual advances, sexual exploitation, and other verbal or physical harassment of a sexual nature in the workplace. It can also be termed as bullying or coercion of a sexual nature or the unwelcome or inappropriate promise of rewards in exchange for sexual favors.<sup>1</sup> The crucial element is the unwelcomeness of the behavior, thereby making the impact of such gestures on the recipient more pertinent than the perpetrator's intent. Sexual harassment is a common issue, where the victim faces hindrances like loss of job or career, loss of income, defamation<sup>2</sup>, dignity, stress, fear, and sometimes loss of life as well.

### SEXUAL HARASSMENT: NECESSITY FOR GENDER-NEUTRAL LAWS

Sexual harassment is one of the most brutal crimes that can happen to any person regardless of age or gender. When we talk about the term "Sexual Harassment" the first thing that comes to our mind is that, 'The victim of sexual harassment is only a female' but this is not true. Males

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\*LLB SECOND YEAR, RIZVI LAW COLLEGE, MUMBAI.

<sup>1</sup> Sexual Harassment Of Women At Workplace (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013, s 2(n)

<sup>2</sup> Indian Penal Code 1860, s 499

are also the sufferers of sexual harassment. Indian society always targets males as the harassers and females as the victims of this harassment. Many males also have experienced such harassment at some moment in their lives. But they are always being targeted and if they try to speak up against such issues people laugh at them and they will receive comments such as, 'You got sexually exploited by a female then you must have enjoyed or have taken advantage of the same' due to these reasons sexual harassment among males have become habitual.

Our society has continuously ignored the sexual molestation of young boys and those boys or males will be continued to be a part of a patriarchal society that cages girls in the name of protection and let boys continue to be abused. Males should also be taught about bad touch similar to what is taught to girls. This gender discrimination violates Article 14<sup>3</sup> of the Indian Constitution which talks about equality before the law and when we talk about equal rights for men and women, there is unfair access to justice as well as infringement of the 'Right to equality'. Across the globe, nearly seventy-seven countries have accepted gender-neutral laws including, the USA, Australia, the UK, Denmark, and many others. But in India, there is an orthodox belief that males are the perpetrators. Gender neutrality seeks to increase the scope of the victims of sexual harassment.

Most of the information regarding sexual harassment is associated with women but there is no reference to males. Women are indeed more susceptible to sexual harassment than men, but it does not repudiate the reality that men and boys are equally the victims of this harassment and should be given equal status and opportunity to get justice for the reason that sexual harassment is a crime which is gender neutral and there should be no discrimination on the ground of gender, which is a fundamental right under Article 15 (1)<sup>4</sup> of the Indian Constitution. This also violates Article 19(1)(g)<sup>5</sup> of the Constitution of India in which every woman has the fundamental right to practice any profession. It also infringes on the right to life and personal liberty as mentioned in Article 21<sup>6</sup> which states that no individual should be deprived of his life and personal liberty.

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<sup>3</sup> Constitution of India 1950, art 14

<sup>4</sup> Constitution of India 1950, art 15 (1)

<sup>5</sup> Constitution of India 1950, art 19 (1)(g)

<sup>6</sup> Constitution of India 1950, art 21

## WOMEN-CENTRIC LAWS AND NO REMEDY FOR MEN

When the victim of sexual harassment is a female she gets more attention and gains sympathy from the people. And there are women-centric laws that are entirely focused on women, however, many females misuse such laws, and due to this the males in our society suffer a lot. And what when there are false allegations made against males? So the question arises who will protect men from this sexual harassment? In India, many laws favor women but unfortunately, there is no law to safeguard males from this vicious crime of sexual harassment. We can say that the laws are biased against males. The author is not targeting a female or trying to state that she is always wrong but when she is wrong she too must be punished. Our legislation should sanction such laws which also protect males but there are no such laws or any remedy which can protect males from such crimes irrespective of gender.

## TYPES OF SEXUAL HARASSMENT AT THE WORKPLACE

As per the Equal Employment Opportunity Commission (EEOC)<sup>7</sup>, there are two types of sexual harassment in the workplace:

- Quid pro quo;
- Hostile work environment.

Quid pro quo means 'something in return for something'. It means seeking sexual advances in exchange for the benefit of something in return such as a hike in salary, promotion, favorable transfer, opportunities, etc to avoid termination and demotion. This also occurs when the manager or an employer promises that they will not lay off an employee if the employee satisfies their sexual demands. For instance, when the employer demands some sexual favors and the employee rejects them, the employer threatens the employee and asks him/her that if he/she does not fulfill the demand, the employer will fire the employee. And the employee due to his/her helplessness has to fulfill the demand of the employer.

A hostile work environment is a type of sexual harassment that unreasonably intervenes with the victim's work performance or creates an intimidating, hostile, or offensive working environment that affects the mental state of the victim. For instance, if an employer tries to

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<sup>7</sup> 'Sexual Harassment' (US Equal Employment Opportunity Commission) <<https://www.eeoc.gov/sexual-harassment>> accessed 19 March 2023

touch the employee inappropriately or in such a way that makes him/her feel uncomfortable. Such unwelcome or unfavorable touch is not accepted.

### **HOW TO PREVENT SEXUAL HARASSMENT REGARDLESS OF GENDER?**

- There must be an anti-harassment policy and should be assured that all employees have signed it.
- To provide regular training and details on sexual harassment to all the staff members.
- To create a positive working environment.
- To take the complaints of the victims of sexual harassment and effectively resolve them.
- To create awareness programs on sexual harassment.

### **GENDER-NEUTRAL POSH POLICY**

The Sexual Harassment of Women at Workplace POSH (Prevention, Prohibition, Redressal) Act, 2013<sup>8</sup> was sanctioned to prevent sexual harassment against women in the workplace and to safeguard them. Even though the POSH<sup>9</sup> Act was initiated to safeguard women against sexual harassment, the question arises that this act is biased against men. The POSH<sup>10</sup> Act only protected women and what about men where should they go if they experience such harassment? Responding to this question the only solution is that the POSH<sup>11</sup> policy should be made gender-neutral. Because sexual harassment in the workplace can be faced by anyone belonging to any gender. Although the POSH<sup>12</sup> Act explicitly safeguards women, it provides men with a redressal mechanism to plead their case in the event of a false or malicious accusation. It gives an equal opportunity to all persons with the principles of Natural Justice which states that “let the other side be heard as well” in legal maxim means Audi Alteram Parte”.

When a woman faces such kind of harassment everyone in society believes that it is true but when a man faces such harassment no one is ready to believe him or they take it as a joke. Due to this some women misuses the POSH<sup>13</sup> Act and make false allegations against men which leads to the defamation of innocent men. Society becomes more judgemental towards men if

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<sup>8</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

such allegations are made against them. And sometimes this humiliation becomes intolerable and people are likely to take drastic steps such as suicide.

In the recent case of Swaroop Raj, a senior executive at Genpact who committed suicide at his home in Noida (December 2018). He was temporarily suspended due to the allegations which were made against him of sexual harassment at the workplace which he had mentioned in his suicide note were false allegations made against him. In his note, he denied all the allegations and also wrote that even if he is proven innocent, his reputation has been ruined.<sup>14</sup> The POSH Act, 2013<sup>15</sup> here seems to be biased against men. To tackle the sexual harassment cases related to other genders as well the act should include some rules and regulations. In the current scenario, women in our society are still scared to speak up because of people being judgemental towards them and men are scared of false allegations made against them that could tarnish their reputation.

### **CASES RELATED TO SEXUAL HARASSMENT**

In the case of Medha Kotwal Lele and Ors. v Union of India and Ors<sup>16</sup>, Medha Kotwal the organizer of Aalochana, an institution for documentation and investigation on women, and other women's rights filed a plea in the court, emphasizing several cases of sexual harassment and stating that Vishakha<sup>17</sup> protocols were not being successfully imposed. The petitioners debated that despite the protocols, women are still being harassed in the workplace because the Vishakha protocols were being infringed in both content and spirit by the state officials who harassed female workers using legal and illegal manners, by torturing them and defaming their integrity. Medha Kotwal wrote a letter in which she mentioned various cases of sexual harassment and conveyed her disappointment regarding the enactment of the Vishakha<sup>18</sup> Guidelines.

After this, the court stated that the Vishakha<sup>19</sup> guidelines must be enforced in form, content, and spirit to avoid gender discrimination and to bring gender neutrality by protecting women

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<sup>14</sup> Abhishek Awasthi, 'AVP's suicide: Genpact management, two staffers booked (The Times of India, 21 December 2018) <<https://timesofindia.indiatimes.com/city/noida/avps-suicide-genpact-management-two-staffers-booked/articleshow/67186860.cms>> accessed 19 March 2023

<sup>15</sup> Ibid

<sup>16</sup> Medha Kotwal Lele & Ors. v Union of India & Ors. (2012) INSC 643

<sup>17</sup> Vishakha and Ors. v State of Rajasthan and Ors. (1997) SC 3011

<sup>18</sup> Ibid

<sup>19</sup> Ibid

to work with integrity and honor. The Vishakha<sup>20</sup> Protocols need both employers and other members to pursue them and curb sexual harassment of women. In another incident, a 41-year-old man committed suicide at his residence in Gurgaon over the sexual assault allegations that were charged against him. In his suicide note, the man stated that he was humiliated by sexual harassment allegations in the meeting. And whatever he has done is due to accusations made against him in the office.<sup>21</sup> As we saw, men too are facing this harassment but the cases of their being harassed by a woman are not registered. Also, the sections mentioned in Indian Penal Code are in favor of women which is partial and discriminatory concerning men. If we analyze Section 376<sup>22</sup> of the Indian Penal Code one can notice that the word Rape is purely focused on women. According to Section 376<sup>23</sup> of the Indian Penal Code, rape is a crime that is committed only against women and not men.

## CONCLUSION

In the current scenario, the major pitfall concerning sexual harassment is that it is not gender-neutral. However, the victim of this harassment could be of any gender and everyone in society should feel secure and protected by the laws. When there is a privilege given to women we shouldn't neglect the privileges of men. Aiming only at one gender is unfair, partial, and an infringement of the constitutional rights of the people under Articles 14<sup>24</sup>, 15<sup>25</sup>, and 19(1)(g)<sup>26</sup> of the Constitution of India. Cinemas, Dramas, and TV endorsements also play a crucial role in making this an ordinary thing that people do not realize is sexual harassment. A woman showing nudity in front of a man, improperly touching him, showing vulgar content, making unwelcome sexual advances, and so on are displayed in cinemas, dramas, and endorsements as if these are common things that a man would desire, although these things do make men feel awkward and could be labeled as sexual harassment. These things are made common in such a way that even if a man faces such things and try to speak up against these accusations he is told to have the advantage of and get contentment from it. People take it as a joke and make fun of him being sexually harassed by a woman. To tackle this issue awareness among people

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<sup>20</sup> Ibid

<sup>21</sup> Sagrika Kissu, 'Humiliated at a meet, Gurugram executive hangs himself' (The Times of India) 02 September 2022 <<https://timesofindia.indiatimes.com/city/gurgaon/humiliated-at-meet-gurugram-executive-hangs-himself/articleshow/93937127.cms>> accessed 19 March 2023

<sup>22</sup> Indian Penal Code, 1960, s 376

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

regarding sexual harassment of men should be initiated. Government should make strict laws regarding sexual harassment in the workplace because it should realize that men too are facing these difficulties and gender-neutral laws should be implemented which will give fair justice to both genders. Over time, the necessity for gender-neutral laws, regardless of gender, has arisen, ensuring the protection of their constitutional rights. Thus, gender-neutral laws are essential for all gender as equal laws will regulate their lives in an unbiased way.

