

## Sexual Harassment of Women in India

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### ABSTRACT

*Violence against women is gradually increasing worldwide with change of time and increasing space for women in economy, family, society and politics. India is no exception of it. The violence against women and girls is rooted to unequal power relations between men and women due to patriarchal setup of the society. Thus, gender roles prescribe a strict division of labour where as women are expected to perform largely reproductive functions – maintenance of the household, child care, serving the elderly etc. Gender roles also prescribe characteristics of docility, unending patience and servility for women. Women are judged and condemned by society if they go against the prescribed terms of behavior for them. Violence against women in general is defined as a force, whether overt or covert, used to wrest from a woman something that she does not want to give of her own free will and which causes her either physical injury or emotional trauma or both. Thus, rape, kidnapping, wife beating, sexual abuse, eve-teasing, mental harassment, physical torture is all examples of violence against women. The concept of domestic violence attempts to be as broad as possible and includes physical, mental, financial, and sexual abuse inflicted upon a woman by any member of the family directly or indirectly. Present paper highlights the trends in sexual violence against women in India and suggests the measures for protection of women against sexual harassment in India .*

### Crimes against Women

Crimes against women are on the rise, along with crimes in general. The brunt of the resulting violence is borne by the marginalized sections of society, women in particular. Most crimes against women go unreported for understandable reasons: attached social stigma, drawbacks in legal mechanism, fear of retaliation and so on. Institutional indifference makes matters worse. It is almost impossible to lodge a complaint against men in the police and the armed forces, or in government services. Importantly, crimes against women have roots in the male dominated socio-economic, legal and political order. Assaults on women are often visibly associated with their social status, their communal, and ethnic and caste identifies (Singh and Pandey, 2009). Police records show that reported crimes have been rising.

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Violence against women is of undoubted importance in the context of assessing women's status. However, the commonly used incidences such as the gender development index and gender related empowerment index ignore this aspect of the well being of women. Crimes against women identified under the IPC are the following: (1) rape; (2) kidnapping and abduction for different purposes; (3) homicide for dowry, dowry deaths or attempts to commit such crimes; (4) torture, both mental and physical; (5) molestation; (6) sexual harassment; and (7) importation of girls. Various crimes are identified under special and local laws, enacted from time to time to deal with specific social and economic problems affecting women. These are (i) Commission of sale; (ii) Immoral traffic; (iii) indecent representation of women; (iv) Dowry cases (Singh, 2010).

In India, we have a unique situation of co-existence of all forms of violence especially of elimination of women, e.g. selective female foeticide, female infanticide, bride burning and sati. The incidence of violence of all forms within family has also gone up. Even today, various forms of violence against women are prevalent in our society, though many cases remain unreported due to cultural norms, apathy or ignorance. They may manifest themselves directly in wife battering, abduction, eve-teasing, verbal abuses or verbal rebukes. Women on many occasions are victimized by all sorts of discriminations, deprivations and obstructions in goal achieving and responses. These incidents may occur in the family, offices, agricultural fields, industries or even public places. It sounds surprising that on animal level predatory aggression (killing and eating) occurs between the species and not within the species, but a human being, the highest on the evolutionary level, kills another human being of his own species (Srivastava, 1988). Inflicting and experiencing violence in many subtle forms causing and suffering mental pain in day-to-day life has become ways of our world in inter-personal relationships. The cruelty, the hate that exists in ourselves is expressed in the exploitation of the weak by the powerful and the cunning (Krishnamurthy, 1977). The worst part of the problem is that women today are not feeling safe and secured even in the family. The concept of home, sweet home is no more, so far many women, who suffer violence against themselves by the members of the family. Home is no safe place when it comes to aggressive behaviour. Fitz and Gerstenzang (1978) observe that episodes of verbal or physical aggression are most likely to occur in the home and the relatives (such as parents' offspring and spouses) were the most frequent targets of aggression. Steinmetz and Straus (1975) described the family as "cradle of violence."

There has been a nominal increase in the proportion of crimes against women during 2002-2013. During 2013, about 2.96 lakh cases of crimes were reported against women as against the total crimes of 26.48 lakh reported

under Indian Penal Code. Crime against women constituted about 9.6 per cent against the total IPC crimes in India. Crimes against women constituted 11.2 per cent in 2013. There has been increasing trend in crimes against women as percentage to total IPC crimes in India. Overall, crimes against women were reported to be 50.86 per lakh population of women. Rate of crime against women was recorded high in Assam followed by Tripura, Rajasthan, Andhra Pradesh, Haryana, Odisha and West Bengal. Cruelty by husbands or relatives was recorded high in the state of Assam (56.29 per lakh women) followed by Tripura (45.59 per lakh women), Rajasthan (44.92 per lakh women) and West Bengal (40.78 per lakh women). Rate of crime committed against women under the Dowry Prohibition Act and Dowry Death has been reported to be low

Types of crimes against women during 2016 are shown in chart 1. Uttar Pradesh, Madhya Pradesh and Maharashtra constitute a large share in total crimes against women during 2016.

**Chart 1**  
**Type of Crimes Against Women in India in 2016**

<i>Type of Crimes</i>	<i>Incidence</i>	<i>Percentage Against Total Crimes</i>	<i>Leading State</i>
Cruelty by Husband and Relatives	10378	32.56	West Bengal Rajasthan Uttar Pradesh
Assault on Women with Intent to Outrage Her Modesty	84746	25.00	Maharashtra Uttar Pradesh Madhya Pradesh
Kidnapping and Abduction	64519	19.03	Uttar Pradesh Maharashtra Bihar
Rape	38947	11.49	Madhya Pradesh Uttar Pradesh Maharashtra

Source: Crime In India, 2017, Statistics, NCRB

### **Sexual Harassment of Women**

Sexual harassment has been defined as clear form of gender discrimination based on sex and a manifestation of unequal power relations between men and women. The sexual harassment at workplace is a form of gender discrimination because decisions at work are based on gender which is an attributed characteristic rather than on qualifications or job performance of the employee. From this point of view it can be understood that sexual harassment at workplace is form of gender discrimination targeted towards women. Further it can be stated that sexual harassment is not only discrimination against women at work based on gender, but is also a form of

gender based violence. Gutek and Morasch (1982) compared sexual harassment of women at workplace with rape to show that they share common features. Exercise of power by one person over another exists in both. Just as rape is sexual intercourse that is unwanted, sexual harassment includes sexual attention that is unwelcome. As explained by them in rape, men use their greater physical strength to engage in sexual activity with women and in sexual harassment men use their superior organisational position to elicit sexual favors from women. It can be concluded that whenever women are sexually harassed or abused at workplaces it involves sexual coercion, intimidation, deprivation of their right to work in a violence free atmosphere, and hostile work environment that affects their safety, well being and health. Therefore it can be arrived at that sexual harassment of women is form of discrimination and violence based on gender which has grave outcomes on employment of women. Therefore it forms a suitable case for intervention from the perspective of human rights.

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights, enshrined in the Constitution of India. It is yet another form of violence against women reflecting patriarchal mindsets and gender based discrimination that women experience at work. It is also a manifestation of power relations, as women are much more likely to be the victims of sexual harassment because of their already existing vulnerability, insecurity, and social conditioning to accept discrimination in silence. Work undertaken by women is grossly underestimated, under-valued and subject to gender based discriminated in terms of disparities in wages, access to and control over resources, lack of infrastructural support and, above all, non-recognition of unpaid care work. Despite a plethora of legislations that attempt to remove inequalities in the workplace, India is witnessing a steady decline in the participation rate of women in the labour workforce. Protection against sexual harassment and the right to work with dignity and non discrimination as per treaties on Human Rights of women and ratification of international conventions by the Indian Government (e.g. United Nations Convention on the Elimination of all Forms of discrimination against Women, International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, Beijing Platform for Action, ILO Conventions etc). 1997 was a turning point in this regard. It was a watershed moment in how we respond to sexual harassment of women when we understand it through a constitutional equality lens. The Vishaka Guidelines (*Vishaka and Others Vs. State of Rajasthan and Others* (JT 1997 (7) SC 384) provided us with a blue print for where we needed to go for developing a rights-based understanding of and response to an issue historically dismissed as “no way to treat a lady.” It gave us the equality

yardstick to measure sexual harassment of women and provided a means to enable systems, such as workplaces, to respond effectively to the elimination of such violation, for the benefit and health of all workplaces. It was a step towards creating responsible mind sets. It was user friendly and accessible. Today, we have the Sexual Harassment of Women at Workplace, (Prevention, Prohibition and Redressal) Act, 2013. Given that its early days, every effort to refine and fine tune such legislation can make it a user friendly constitutional tool in the hands of employers and employees to create healthy and safe workplaces and safeguard the vision of Vishakha, one reaffirmed by the Justice Verma Committee (2013).

With the increase in urbanisation and industrialisation, women employment has also gradually increased over the period. However, most of the female workers (95.9 percent) are engaged in unorganized sector of economy. The female workers are more than male workers in unorganized sector. The employment of women workers in public sector and private sector were reported to be 3.17 million and 2.88 million respectively during the year 2011. The highest numbers of women workers were employed in southern zone whereas the lowest numbers of women workers were employed in Andaman & Nicobar Islands. Women employment in organized sector has been reported significant in the developed states while women's employment in private sector has been found high in the states Maharashtra, Delhi, Kerala, Andhra Pradesh, Karnataka and West Bengal. Overall women employment has increased in urban sector however, women employment in agriculture sector has declined both in rural and urban sector. Similarly, majority of the employed women were engaged in manufacturing and community, social and personal services in private sector. The proportion of women's employment in the private sector was recorded low (46.74 per cent) as compared to public sector (53.25 per cent). Women employment has increased significantly in services sector. Women account for 32 per cent of the workforce in the informal economy, including agriculture and 20 per cent of the non agricultural workforce. About 118 million women workers are engaged in the unorganized sector in India, constituting 97 per cent of the total women workers in India. Sexual harassment of women during 2016 in India is shown in chart 2. The crime rate has been found higher in Uttar Pradesh, Madhya Pradesh and Kerala.

Cases of sexual harassment of women during 2016 in India are shown in chart 3. The number of crimes has been found higher in Uttar Pradesh, Maharashtra, Madhya Pradesh and Kerala..

There has been rise in reported cases under Sexual Harassment Act, 2013 (Chart 4).

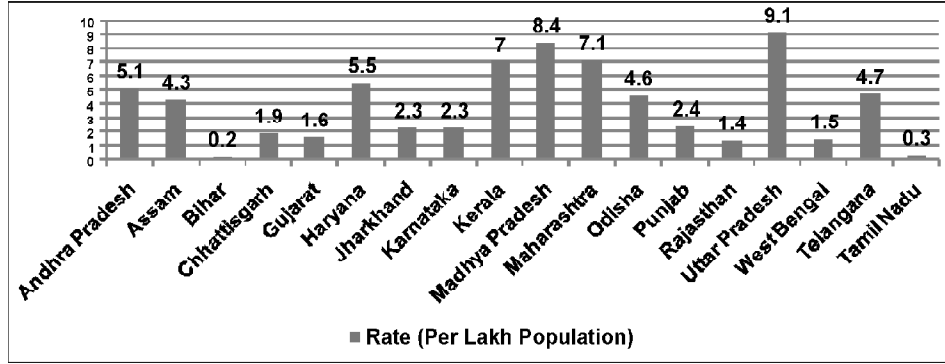


Chart 2: Sexual Harassment of Women in 2016

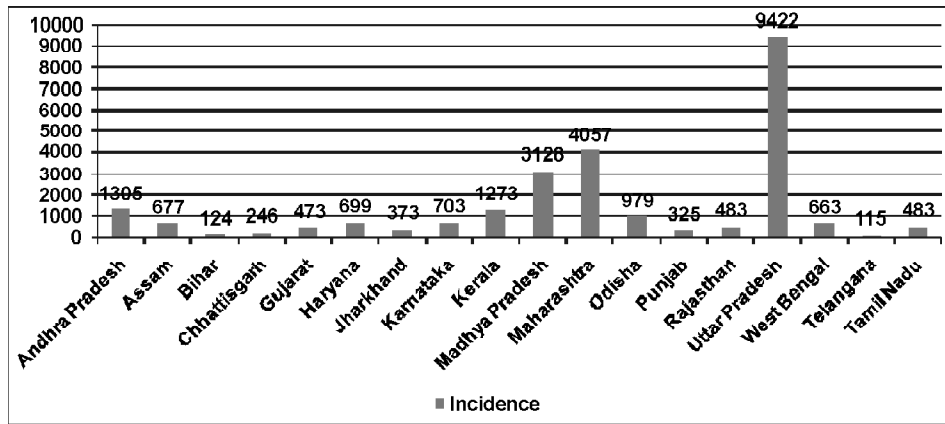


Chart 3: Cases of Sexual Harassment of Women in 2016

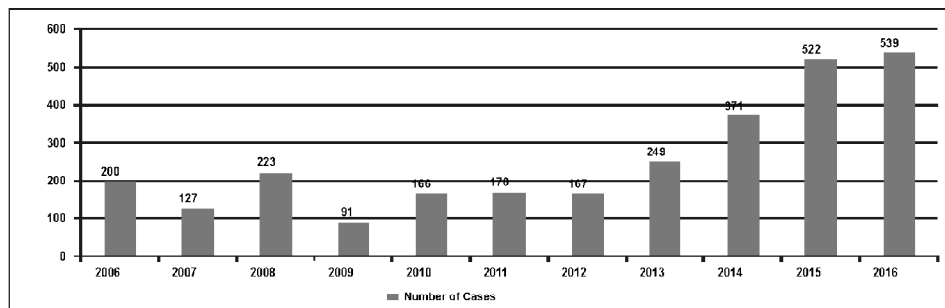


Chart 4: Rise in Reported Cases Under Sexual Harassment Act

The number of sexual harassment cases was reported higher in ICT sector including call centres and BPO sector. There has been increasing trend in sexual harassment cases in India across the sectors (Chart 5).

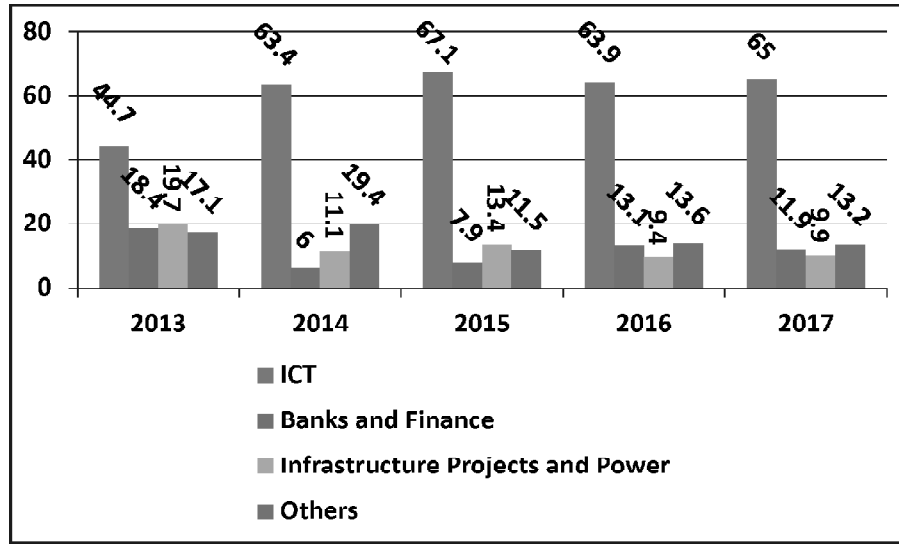


Chart 5: Sector-wise Share of Sexual Harassment Cases

Since Mackinnon's (1979) *Sexual Harassment of Working Women*, social scientists have conceptualized sexual harassment as a stressor detrimental to one's mental and physical health (Fitzgerald, Hulin, and Drasgow 1994). Harassment is associated with increased risk of anxiety, depression, and posttraumatic stress disorder as well as diminished self-esteem, self confidence, and psychological well-being (Pryor and Fitzgerald 2003; Welsh 1999; Willness, Steel, and Lee 2007). Despite this evidence, questions remain regarding the association between sexual harassment and depressive symptoms across the early life course, for men and women.

### Prevention of Sexual Harassment Act, 2013

- Framed under the overall Constitutional Equality and Right to Life guarantees along with CEDAW (Convention on the Elimination of All Forms of Discrimination against Women).
- It not only defines sexual harassment at the work place but also creates a mechanism for redressal of complaints. The definition of "aggrieved woman", who will get protection under the Act covers all women, irrespective of their age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and/or domestic workers.
- It mandates employer's to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. On the other hand,

the District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.

- On a complaint, the Committee is required to complete the inquiry within a time period of 90 days.
- The Act also prescribes penalties for employers who violate the provisions of the Act. Non-compliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Also, repeated violations may lead to higher penalties to the extent of cancellation of licence or registration to conduct business.
- Prioritising Redress over Prevention.
- It Adopts an adversarial system it grants the Internal Complaints Committee selective powers of a civil court .The Complaints Committees is vested with the powers of civil courts for gathering evidence and can also initiate a conciliation proceeding if requested by the complainant.
- It has processes which run contrary to the prohibition of intimidation of witnesses or complainants.
- Compliance by all workplaces.
- An elementary form of monitoring.
- With respect to a complaint redressal, confidentiality applies only to communication/publication or making information known to public, press and media.

### **Preventing Sexual Harassment**

The duties of an employer and/or the appropriate Government towards the prevention of sexual harassment in the workplace have been explicitly laid down in the Acts as follows:

- Provide a safe working environment at the workplace which shall include safety form third party (outsiders) coming into the contact at the workplace
- Display penal consequences of sexual harassment
- Display information about the grievance handling mechanisms including about the Internal Complaint Committee/ Local Complaints Committee.
- Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provision of the Act.



- Organize orientation programmes for the members of the Internal Committee.
- Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

### **Conclusion**

Women constitute about half of the population and human resources of the country, however, development has bypassed them. They have been victims of violence, exploitation, discrimination and bias in almost all the societies in India. Violence is a phenomenon that starts at the conception and carries on through their entire life span. In India too, sex selection and consequent infanticide is a common occurrence and the preference for the male child is wide spread. The discrimination and gender bias is found prevalent by way of access to adequate food, nutrition, health and medical care, burden of domestic work, care of siblings, education and skill enhancement etc. In order to create violence free environment and provide protection to women against discrimination, exploitation and violence, constitutional and legal provisions have been made. A number of legal Acts have been enacted to provide justice to the victims of violence and also to prevent the crimes and violence against women. There has been a long history of legal control and judicial response towards the protection of women's rights, prevention of violence and rehabilitation of victims. However, Protection of Women against Domestic Violence Act, 2005 is the milestone in the history of legal control and judicial response in domestic violence affairs. Government of India has also enacted Prevention of Sexual Harassment Act, 2013 in order to create safe working environment.

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights, enshrined in the Constitution of India. It is yet another form of violence against women reflecting patriarchal mindsets and gender based discrimination that women experience at work. It is also a manifestation of power relations, as women are much more likely to be the victims of sexual harassment because of their already existing vulnerability, insecurity, and social conditioning to accept discrimination in silence. Work undertaken by women is grossly underestimated, under-valued and subject to gender based discriminated in terms of disparities in wages, access to and control over resources, lack of infrastructural support and, above all, non-recognition of unpaid care work. Despite a plethora of legislations that attempt to remove inequalities in the workplace, India is witnessing a steady decline in the participation rate of women in the labour workforce.

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