
**WOMEN SAFETY WITH SPECIAL REFERENCE TO SEXUAL HARASSMENT OF WOMEN AT
WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL ACT) 2013**

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Abstract: There has been a lot of silence regarding, the existence of sexual harassment of women at workplace. Ignorance about the problem is a big problem. The patriarchal socialization and internationalization push many women to believe that this is a minor challenge that needs to be tackled by every woman in the workplace. Sexual harassment in the working place is an important cause to workplace stress, women are most likely to experience sexual harassment compared to men. Opposing the harasser creates greater damage to the image of the woman than the man who is harassing. She becomes a topic of office gossip.

In addition, a study indicated that the sexual harassment negatively affects workers psychologically well-being. Workplace bullying, is the tendency of individuals or groups to use persistent aggressive or unreasonable behavior against a co-worker or subordinate. Gender violence against Indian women is not restricted only in the private space. Violence against women in the homes, streets, also happens in the working stations.

Sexual harassment of working women has been one of the most pervasive but carefully ignored features of our society. In Indian criminal law, sexual harassment of women had not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, the object 'sexual harassment of working women' was named and defined in *Vishaka v State of Rajasthan* wherein the term 'sexual harassment' was defined. Parliament also enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which gave statutory force to many of the guidelines laid down by the Supreme Court in *Vishaka v State of Rajasthan*. This is a key instrument of the obligations that India has to protect women's human rights in the workplace.

Keywords: Gender discrimination, Right to life, liberty and dignity, Sexual Harassment, Unreasonable behavior, Workplace.

Introduction: Women have been greatly praised and honoured in the literature and religion of our society. They have been called Devi and Shakti yet their actual position is made clear at the time they go out of the house alone. Though Indian Constitution guarantees fundamental right of equality to all citizens and prohibits any discrimination on the basis of caste, creed, gender and race yet in some terms, there is discrimination to woman in almost all fields. Today's world is woman's world. Some Non-governmental organizations have conducted survey and found that woman is more efficient than man if found good working atmosphere. But a professional woman faces sexual harassment at working place day to day which directly affects its efficiency towards good work as well as infringement of her fundamental right of freedom to work. Until now, women have silently endured from sexual harassment at workplace, considering it to be a normal occupational hazard. But with the increasing liberation in women's outlook and the society in general the facts regarding sexual harassment are coming out in open. Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances; a demand or request for sexual favours; sexually-coloured remarks; showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. In other words sexual harassment of working of women amounts to form sex, discrimination projected through unwelcome sexual advances and request sexual favours or other physical conduct, work

performance or creating an intimidating environment for working women.

Where any of these acts is committed in circumstances where victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations and the resentment towards incidents of sexual harassment is also increasing.

Freedom from sexual harassment is a human right: Sexual harassment in the workplace has been defined internationally as a form of gender based discrimination against women, as well as a form of violence against women. Its importance on the global stage has increased dramatically as women have entered the workforce increasingly over the past 20 years. A woman's right to a workplace free of sexual harassment has been framed in a right-based context by the international community as well as States who are party to the core human rights

treaties. Many jurisdictions globally have legal instruments for the protection of life and liberty and these instruments can be used to prevent and address sexual harassment in the workplace.

In India, the landmark judgment in **Vishakavs State of Rajasthan (1997) 3(SCC)242 (hereafter 'Vishakhajudgement')**, and more recently the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are grounded on the constitutional right to life and liberty (Article 21 of the Constitution of India), the right against discrimination (Article 14), and the freedom to practice any trade or profession without hindrance or let (Article 19(1)(g)). The importance of bringing sexual harassment in the workplace into the public domain is central to the promotion of women's human rights in India. Where systematic sexual harassment in any workplace is evident, there is a duty on nations' legal institutions charged with protecting these rights to take action on what is essentially a human rights violation.

Defining of sexual harassment within the obligations of international agreements: General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination Against Women notes that, "equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace. The Committee went on to define sexual harassment as; "such unwelcome sexually determined behaviors physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment".

The International Labor Organization has addressed sexual harassment as a prohibited form of sex discrimination under the Discrimination (Employment and Occupation) Convention (No C111). India ratified this document on 3 June 1960. It defines discrimination to include "any distinction, exclusion or preference made on the basis of 'sex' which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." In this way also, it is clear that India has an obligation to prevent, prohibit, and address sexual harassment in the workplace as a gender discrimination issue of utmost importance.

The international law clearly recognizes the gendered nature of social and economic dominance between the victim and the perpetrator, as an important reason why sexual harassment at the workplace is a human rights violation.

Quid Pro Quo Harassment: The key elements of quid pro quo sexual harassment are a demand for a sexual favour and the threat of adverse job consequences if the demand is refused. It is implicit in the second element

that the perpetrator has to be in a position to create adverse job consequences for the woman. Typically, such a perpetrator would have to be in a position of authority over the victim, although quid pro quo sexual harassment may also exist vis-à-vis a colleague of the same rank, e.g., where work evaluation takes into account comments from co-workers, or when a co-worker makes sexual demands a condition for co-operating on a team project. Adverse work consequences may be 'tangible' such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, decrease in wage or salary, a less distinguished title, a material loss of benefits and significantly diminished material responsibilities. These are some examples listed by the US Supreme Court in the case of *Burlington v Ellerth* 524 US 742 (1998). It should be stressed here that it is not necessary in an allegation of quid pro quo harassment for the threat of adverse employment action to have been carried out. It is sufficient for the complainant to prove that such a threat was made. Quid Pro Quo sexual harassment has also been recognized by the Courts in India in the *Vishaka* judgement.

Creation of Hostile Work Environment: An essential element that is recognized in the global evolution of the law on sexual harassment in the workplace is that sexual harassment creates a hostile work environment. Evidence that a hostile environment has been created through a woman's exposure to sexual harassment is seen via detriment to the woman's physical integrity or mental health. Where there is evidence that a woman psychologically damaged by the conduct of the superior, and this conduct is of a sexual nature, it is clear that sexual harassment has created a hostile environment. Sexual harassment can be a subtle and insidious poison which leaks slowly into the victim and can have life-long effects on a woman's life. Psychological damage in these circumstances can take years to manifest, and women often speak of feeling the guilt and shame associated with the experience longer after the sexual harassment has ceased. Sexual harassment at the workplace, whether quid pro quo or not, creates a hostile environment not merely for the woman who is being harassed but for all working women in that environment, and therefore constitutes a violation of the precious right to life and liberty under Article 21 of the constitution, the right to pursue the profession of one's choice under Article 19(1)(g), and is further violation of the right to equality under article 14.

Early development in the law: The term sexual harassment at workplace was first used by **Prof. Catherine Mckinnon** in the year 1977 in a paper written by him on sexual harassment. Mckinnon published "sexual Harassment of working women", arguing that sexual harassment is a form of sex determination under the Title VII of the Civil Rights Act of 1964 (US) and any other sex discrimination prohibition. A sustained campaign in the USA brought amendments to the law, recognizing that sexual

harassment at the workplace was a form of gender discrimination and therefore an actionable wrong.

In India, prior to 1997, there existed no statutory remedy or definition of sexual harassment at the workplace, and such offences, where agitated at all, were broadly covered under outdated provisions of the Indian Penal Code relating to “outraging the modesty of a woman”(section 354,IPC)and “insulting the modesty of a woman”(section 509,IPC). Because of a gap between the offences of sexual harassment against women and the lacunae in the legislation, cases of harassment at workplace mostly went unreported and their gravity was not recognized by the employers.

In **RupanDeol Bajaj vs K.P.S Gil(1995)6SCC194** the supreme court was confronted with a case where a senior IAS officer had been sexually harassed by her superior officer at a social function. At this point of time, there was no specific provision in the IPC that dealt with the offence of sexual harassment at workplace. The FIR under Sec.354 and Sec.509 of the IPC was quashed by the High Court. However, the Supreme Court set aside the judgment of the HC and admitted the FIR on ground that sufficient material was on record under both these sections to make out a prima facie case. Recognizing the glaring gap between the statutory law and a clear mandate of international convention law, the Supreme Court for the first laid down the law relating to the sexual harassment at the workplace in **Vishakavs State of Rajasthan (1997) 6SCC 241**.In this case a writ petition was filed for the enforcement of fundamental rights guaranteed under Articles 14,19, and 21 of the Indian Constitution by certain social activists and NGO's. The basic cause for filing of petition was due to an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. The whole issue which drew the attention of the court is whether the existing legal provisions in India are sufficient to deal with all facets of gender justice including prevention of sexual harassment or abuse. To answer this question the court examined various constitutional and penal provisions existing in India. It is submitted that the present penal provision in India is insufficient and inadequate to check the evil of sexual harassment of women at all work places. It laid down the definition of sexual harassment and established guidelines to be followed by employers for the purpose of prevention as well as redressal of complaints. The court defined sexual harassment at the workplace as “sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) also;

- a) Physical contact and advances;
- b) A demand or request for sexual favours;
- c) Sexually coloured remarks;
- d) Showing pornography;
- e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature.
- f) Where any of these acts is committed in circumstances where under victim of such conduct

has a reasonable apprehension that in relation the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

The court further observed “Each such incident results in violation of the fundamental rights of ‘Gender Equality’ and the “Right to Life and Liberty”. It is clear violation of rights under Articles 14,15,21 and 19(1)(g) of the Constitution. In this case the supreme court of India set out what are known as Vishaka Guidelines, to protect female employees from sexual harassment at work place, including the setting up of committees in every institution to deal with cases of sexual harassment. In **Apparel Export Promotion Council vs A.K Chopra(1999)1SCC 759** the Supreme Court sought to advance the law in relation to sexual harassment at the workplace. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression molestation. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy had no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The Supreme Court gave a broader interpretation to the word ‘molestation’ to include any untoward act towards a female employee by a male employee that may cause her discomfort.

In 2012 in **MedhaKotwalLele and others vs Union of India**, the Supreme Court expressed its anguish at the non-implementation of the guidelines laid down in Vishakajudgement. The Court stated that the attitude of neglect in establishing effective and comprehensive mechanisms in letter and spirit of the guidelines by the State as well as the employers in private and public sector had defeated the very objective and purpose of

the guidelines.

Fifteen years after the Vishaka judgement, the guidelines laid down by this court for the prevention and redressal of sexual harassment, many women still struggled to have their most basic rights protected at workplaces as the statutory law was not in place, the Supreme Court observed-“the implementation of the guidelines in Vishaka had to be not only in form substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect.

Statutory provisions: Nearly 16 years after the Vishaka judgement, Parliament has enacted the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** which gave statutory force to many of the guidelines laid down by the Supreme Court in the Vishaka judgement and subsequently. This Act is an instrument of the obligations that India has to protect women’s human rights in the workplace.

Salient features of the Sexual Harassment Act:

Scope: The ambit of the sexual harassment act is very wide and is applicable to the organized sector as well as the unorganized sector. In view of the wide definition of ‘workplace’ the statute, inter alia, applies to government bodies, private public sector organizations, organizations carrying on commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institute, sports institutions and stadiums used for training individuals. As per the Sexual Harassment Act, a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment –including transportation provided by the employer for the purpose of commuting to and from the place of employment.

The definition of ‘employee’ under the sexual harassment act is fairly wide and covers regular, temporary ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labour, co-workers, probationers, trainees and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on voluntary basis or otherwise, whether the terms of employment are express or implied.

Internal Complaints Committee and Local

Complaints Committee: The Sexual Harassment Act requires an employer to set up an ‘Internal Complaints Committee’(ICC) at each office or branch, of an organization employing at least 10 employees. The government in turn required to set up a ‘Local Complaints Committees’ (LCC) at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The Sexual Harassment Act also sets out the

constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

Process of Complaint and Inquiry

Complaint Committee to be set up:

- It is mandatory to set up a Complaints Committee to deal with incidents of sexual harassment.
- The Committee must be headed by a woman.
- The half of its members should be women and It should include a third –party represented from an NGO/agency conversant with the subject.
- A member of the Committee must have 5 years experience in social service or to be familiar with labor, service, civil or criminal law.
- When the complaint is against the employer it will be handled by LCC.

A domestic worker can file the complaint. A domestic worker is one employed for household work of remuneration. They can approach the LCC in case of any complaint. Relatives of the employer cannot file a complaint.

Procedure for filing a complaint

- A complaint shall include 6 copies with supporting documents
- The Complaint Committee should send one copy to the respondent within 7 working days to get a reply
- The respondent has to file his reply within 10 working days.
- The Complaint Committee has to inquire into the complaint, with principle of natural justice
- A complaint of sexual harassment needs to be filed within 3 months
- The period may extend to another 3 months, in grave circumstances that prevented her from filing the complaint in time

Period of Inquiry and Action

- The Committee is required to complete the inquiry within 90 days
- On completion of the inquiry, the report should be sent either the employer or District officer within 10 days of its completion
- They are mandated to take action on the report within 60 days
- If allegation is not proved the Committee to send report stating that no action is required

Interim Action During Inquiry

- The aggrieved or the respondent can be transferred to avoid face to face context
- Grant leave to the aggrieved up to 3 months
- Other reliefs to the aggrieved as prescribed in the rules
- The employer should implement the above recommendation and inform the Committee about it.

Action against Frivolous Complaints: So as to ensure that the protections contemplated under the Sexual Harassment Act do not get misused, provisions for action against “false or malicious” complaints have been

made.

Employers Obligations.

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter alia,

- i. Provide a safe working environment.
- ii. Display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee.
- iii. Organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee.
- iv. Treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.

The employer is also required to monitor the timely submission of reports by the ICC. If an employer fails to constitute an Internal Complaints Committee or does not comply with the provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of upto Rupees 50,000. A repetition of the same offence could result in the punishment being double and /or de-registration of the entity or revocation of any statutory business licenses.

Amendment to the Indian Penal Code: As a result of the growing importance of the issues relating to sexual harassment and protection of female employees in India, a new section sec 354A was added to the Indian Penal Code, 1860 through the Criminal Law (Amendment) Act, 2013, which enlists the acts which constitute the offence of sexual harassment and further envisages penalty/punishment for such acts. A man committing an offence under this section is punishable with imprisonment, the term of which may range between 1-3 years or with fine or both. Since the amendment criminalizes all acts of sexual harassment, employers shall be required to report any offences of sexual harassment to the appropriate authorities.

Sec 354A reads as follows; Sexual Harassment and punishment for sexual harassment-(1) A

Man committing any of the following acts-(I) physical contact and advances involving unwelcome and explicit sexual overtures; or

- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or Clause (iii) of sub-section shall be

punished with rigorous imprisonment for a term which may extend to three years, or with fine or with both

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or both. The offence is bailable, cognizable and is triable before any Magistrate.

Conclusion: The number of women in the workforce has grown significantly in recent years and with it, the number of complaints of sexual harassment. Women are perceived as easy prey at the workplace, vulnerable to losing their jobs if they complain. The imbalance of power in offices adds to the sense of vulnerability. The importance of bringing sexual harassment in the workplace into the public domain is central to the provision of women's human rights. But now social attitudes to the treatment of women have changed in India. Aggrieved employees are no longer prepared to suffer in silence. The changing socio-cultural landscape in India, it is imperative that employers comply fully with their obligations under the Act, not only to avoid incurring fines and suffering reputational damage, but also to embrace what the Act is seeking to achieve. The law makes sexual harassment at workplace a legal wrong. It aims at man-woman harmony at workplace. It aims to build up confidence amongst female employees to stand up against harassment. It makes the employer duty bound to ensure a harassment free atmosphere for women to enhance work productivity.

In spite of a law to prevent sexual harassment at the workplace was enacted we can see many allegations including against high profile individuals also. On the other hand such laws have encouraged many women to come out in the open to protest such attacks on their personal integrity and thereby creating a sense of empowerment.

Mahatma Gandhi has said "To call women weaker sex is libel, it men's injustice to women, if by strength is meant brute strength, then indeed is women less brute than men. If by strength is meant moral power, then women is immeasurably men's superior". Though there are several statutes regarding the evil face of sexual harassment of working women but the solution lies within us. **Nehru has said** "When the woman moves forward, the family moves, the village moves, and the Nation moves". It is our bounden duty to respect women at every place and to encourage her to work together with dignity so that our nation can develop its economy as well as its moral status in the world.

References:

1. Chorine, Christine, Minie Desai, Colin Gouslaves (1999), Women and Law, Vol I&II, Sociological Information Centre, Mumbai.
2. Geenthanjali Gangoli, (2007), Indian Feminism- Law, Patriarchies and Violence in India, Ashgate publishing Ltd,.
3. Ms Indira Jaising, Law Relating to Sexual Harassment.

4. Mathew,Mini (2002), Sexual Harassment at Workplace, India Centre for Human Rights and Law, Mumbai
5. Patel,Vibhuti (2002), Women Challenges of the New Millenium,Gyan Publication, Delhi.
6. News papers and Journals.
7. Information from various websites.

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