

BACKGROUND AND LEGAL FRAMEWORK OF SEXUAL HARASSMENT OF WOMEN AT WORK PLACE IN INDIA

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Abstract: Sexual Harassment is a topic of concern throughout the world. It has been a fixture of the workplace since women first began to work outside the home. Women are the integral part of human kind. In the modern world the contribution of women in the work of all sectors is very remarkable. But at the same time women are harassed sexually by male workers at workplaces, large-scale surveys of working women suggest that approximately 1 of every 2 women will be harassed at some point during their academic or working lives. Sexual Harassment directed against women at workplace by their supervisors, fellow employees, or third parties interferes with the integration of women in the workforce, reinforces the subordination of women to men in society, and violates women's dignity.

The problem of sexual harassment at the workplace is a major occupational hazard affecting women all over the globe. In the Indian context, the situation is even more serious as 92 per cent of working women are in the informal, unorganized sector where they don't get any statutory protection. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. So many laws have been implemented to protect women from the sexual harassment at workplaces. This paper tries to analyse the background and key provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which is aimed to prevent the danger of sexual harassment at workplace.

Key words: Sexual Harassment, Women, Workplace, Human Right and violation

"Too many women in too many countries speak the same language of silence."

(From "Silence" by Anusuya Sengupta)

"Silence is the most powerful enemy of social justice" -Amarthya Sen.

Introduction: With the improved access to education and employment millions of Indian women are entering the country's work force today. Many working women face sexual harassment at their work place. Sexual harassment has been recognized as a violation of human rights and it is considered as a crime which violates the dignity and respect of a women. Sexual harassment which was otherwise invisible menace until quite recently, has now become a major social problem with the widespread entry of women as a work force. Gender equality in all dimensions is a basic human right and the Constitution of India guarantees all its citizens equality of status and opportunity. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. The Constitution also provides every citizen the 'right to practice or carry out any occupation, trade or business', which includes the right to a safe environment, free from all forms of harassment.

A safe workplace is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to

live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women's dignity violate the principle of equality of rights.

Violence against women is experienced by women of all ages and social classes, all races, religions and nationalities, all over the world. It is overwhelmingly perpetrated by men. Its forms are both subtle and blatant and its impact on development is profound. But it is so deeply embedded in cultures around the world that it is almost invisible. In India, every 51 minutes, a woman is reported to be sexually harassed and every 26 minutes a woman is sexually molested. Several studies indicate that the magnitude of unreported cases is several times over the estimate.

Meaning of sexual harassment: The term "sexual harassment" first came into use in the late 1970s in the United States. The term's origins are generally traced to a course on women and work taught by Lin Farley at Cornell University. In 1979, Catherine MacKinnon, a legal scholar from the United States, made the first argument that sexual harassment is a form of sex discrimination prohibited by the

constitution and civil rights laws of the United States. Since then many international bodies, national legislatures and courts have prohibited sexual harassment but have not agreed on a universal definition of the term.

Sexual Harassment can be defined as “uninvited and unwelcome verbal or physical behaviour of a sexual nature especially by a person in authority toward a subordinate (as an employee or student)”. Sexual harassment may be physical or verbal. Sexual Harassments may be two kinds. The first type is called as the ‘Sexual coercion or quid pro quo sexual harassment’. It takes place under a condition of employment, where an openly or implicitly offer in keeping a job or getting a promotion is made by a supervisor to an employee in exchange for sexual favours. Other type is known as ‘Sexual annoyance’. This type of sexual harassment occurs when a co-worker in the workplace makes sexual advances to an employee.

In 1997 in *Vishaka Vs. State of Rajasthan and others*, for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly such as

1. Sexually coloured remarks
2. Physical contact and advances
3. Showing pornography
4. A demand or request for sexual favours
5. Any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

Effects of sexual harassment: The effects of sexual harassment vary from person to person and are dependent on the duration and severity of harassing behavior. However, in most instances, it leaves negative effects and psychological impacts of various forms in their life. Anyone who has experienced sexual harassment feels humiliated and demoralized. Their self confidence and self esteem gets diminished and feels that their dignity is violated and stripped.

Some of the potential effects:

- Anxiety, frustration, depression, sleeplessness and/or nightmares, difficulty concentrating,
- headaches, fatigue, helpless or out of control, feeling angry towards the harasser , loss of confidence and self esteem, withdrawal and isolation, suicidal thoughts or attempts
- Retaliation from the harasser, or colleagues/ friends of the harasser
- Having to drop course, or change academic plains; it may impact grade performance
- Increased absenteeism to avoid harassment, or because of illness from the stress
- Having one’s personal life held up for public scrutiny-the victims becomes the accused, and their dress, lifestyle, and private life will often

come under attack. Being objectified and humiliated by scrutiny and gossip

- Become publicly sexualized
- Defamation of character and reputation
- Stress impacting relationships with significant others, sometimes resulting in the demise of the relationship; equally stress on peer relationships and relationships with colleagues

Evolution of the Law on prevention of sexual harassment at workplace:

Sexual Harassment at the workplace in India has continued to be a serious offence and not something often openly spoken about. 1997 was a turning point in this regard when we finally understood sexual harassment of women through a constitutional lens. The Supreme Court of India, in the *Vishaka* case, acknowledged Sexual Harassment at the workplace as a human rights violation. Keeping in lieu the increase in the number of cases of Sexual Harassment faced by women, there was an urgent need for a forceful law to come into place to protect against such harassment. On 23rd April, 2013, a comprehensive legislation was finally brought into force that deals with the protection of women against sexual harassment at workplace by enacting ‘The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013’. This new legislation makes every effort to be a user friendly constitutional tool in the hands of the employers and employees, to create healthy and safe workplaces and safeguard the vision of *Vishaka* guidelines, one reaffirmed by the Justice Verma Committee (2013)

Vishaka Guidelines: In 1992, Bhanwari Devi, a woman employed with the rural development programme of the Government of Rajasthan was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage.⁵ This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women’s rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of *Vishaka*.

The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy, and acknowledged workplace sexual harassment as a human rights violation. In framing the Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the *Vishaka* Judgment, the following Guidelines, until such time a legislative frame work on the subject has been drawn up and enacted, would have the effect of law, mandatorily to be followed by

organizations, both in the private and government sector.

1. Express prohibition of sexual harassment as defined, above at the work place should be notified, published and circulated in appropriate ways.
2. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules / regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
3. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1940.
4. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Salient features of the Act

- 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 is 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 committee must be headed by a woman and no less than half its members should be women
- Must include an NGO/individual familiar with the issue of SH
- Procedure must be time bound and confidentiality must be maintained.

References:

1. Articles 14, 15 and 19 of the Constitution
2. Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
3. Article 19(1)(g)
4. Krug E, Dahlberg L, Mercy J, Zwi A, Lozano R (2002). World report on violence and health. Geneva: WHO, http://www.who.int/violence_injury_prevention/violence/world_report/en/introduction.pdf
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6. Chesfeeda Akhtar, Sexual harassment at work place and in educational institutions: A case study of District Shrinagar, Kashmir, International NGO Journal, Vol.8(3),2013,p.54
7. 1997 (7) SCC 323
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