



Research Paper

Sexual Harassment in work place and Legal protection therein

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Abstract:

With improved access to education and employment, millions of Indian women are joining the country's workforce today. On a daily basis, many working women encounter sexual harassment at work. As a result, it is critical that we fight as a nation to eliminate workplace sexual harassment, since women have the right to work in a safe and secure space. Gender equality and the growth of the nation as a whole necessitate the protection of women.

-Maneka Gandhi

Sexual harassment at work is a form of everyday violence that is both discriminatory and exploitative since it threatens women's right to life and livelihood. It is a violation of a woman's fundamental rights to equality under Articles 14 and 15, as well as her right to live in dignity under Article 21 of the Indian Constitution. On July 9, 1993, India signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). After the violent gang rape of Bhanwari Devi, a social worker from Rajasthan, a petition was brought in India's Supreme Court for the first time in 1997 to protect fundamental rights of working women. Aside from the Vishaka guideline in the case of Vishaka & Ors. v. State of Rajasthan, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (hence referred to as the POSH Act) was also passed. The current law in India on Sexual Harassment is critically examined in this paper. For the law to work efficiently and successfully, it requires the support and dedication of all parties.

Key words: Sexual Harassment, Vishaka guidelines, POSH Act, Nirbhaya Case, Women's right.

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I. INTRODUCTION:

“You can tell the condition of a nation by looking at the status of its women.”

– Pandit Jawaharlal Nehru

Sexual harassment of women is a worldwide problem that affects both industrialised and developing countries. It has spread like a virus across society, cutting through religion, culture, race, caste, class, and geographical borders. It has erupted into a global issue, as it is objectionable to human dignity, human rights, and gender equality. It's a complicated issue involving women, their beliefs and behaviour, as well as the social rules that arises from gender discriminating attitudes and is a complex combination of gender, power, and sexuality. Every 12 minutes, a woman in India is sexually harassed. The role of women in India is quickly changing as a result of industrialisation, globalisation, and growth in different sectors. In India today, women are making advancements in nearly every field, including education, economics, politics, media, art, space and culture, service sectors, science and technology, and so on. As women's roles have evolved from domestic to commercial, so have the number of crimes committed against them. Despite growing rates of sexual harassment, women are reluctant to disclose it for fear of losing their personal and professional reputations and livelihoods as a result of the social stigma.

II. WHAT IS SEXUAL HARASSMENT?

As a result of growing importance of this issue S. 354A was added to the IPC through the way of Criminal Law (Amendment) Act, 2013 which enlists the acts which constitutes the offence of sexual harassment. They are:

- physical contact and advances involving unwelcome and explicit sexual overtures; or

- a demand or request for sexual favours; or
- showing pornography against the will of a woman; or
- making sexually coloured remarks

Earlier, there were no related laws in the Indian Penal Code that could be evoked. There were three sections in Indian Penal Code viz. S. 94, 354 and 509 to deal with such crimes. However, these related laws are framed as an offence that either amount to obscenity in public or acts that are seen to violate the modesty of women. While Section 294 IPC is a law applicable to both men and women, the latter two are specifically oriented towards women.

Sexual harassment is a common problem affecting all women in this world irrespective of the profession that they are in, but legal system is sleeping and so they fail in providing them security. It's not all, women living in those countries having developed legal system faces other problems like being fired out of work, ridiculed, societal pressure or promises of desired promotion, etc. that makes them left with no words. Sexual harassment is about male dominance over women and it is used to remind women that they are weaker than man. In a society where violence against women is posed just to show the patriarchal value operating in society, these values of men pose the greatest challenge in curbing sexual harassment. Studies have shown that 1 out of every 3 working women are touched by sexual harassment.

Every country is facing this problem today. No female worker is safe and the sense of security is lacking in them. There are certain developments in laws of many countries to protect women workers from sexual harassment. During 2007 alone, the U.S. Equal Employment Opportunity Commission and related state agencies received 12,510 new charges of sexual harassment on the job.

Sexual harassment is rooted in cultural practices and is exacerbated by power relations at the workplace. Unless there is enough emphasis on sensitization at the workplace, legal changes are hardly likely to be successful. Workplaces need to frame their own comprehensive policies on how they will deal with sexual harassment. Instead of cobbling together committees at the court's intervention, a system and a route of redress should already be in place.

III. INTERNATIONAL LAWS AND POLICIES FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE

3.1. United Nations General Assembly Resolution 48/104123 on the Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women (Art. 4(d-f)).

3.2. The Convention on the Elimination of all Forms of Discrimination against Women¹²⁴ (CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16).

3.3. Moreover, the *Beijing Platform for Action, para. 178*, recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.

3.4. The *ILO Committee of Experts on the Application of Conventions and Recommendations* has confirmed that sexual harassment is a form of sex discrimination covered by the Discrimination (Employment and Occupation) Convention (No. 111) of 1958. The ILO's Indigenous and Tribal Peoples Convention (No. 169) also specifically prohibits sexual harassment in the workplace.

3.5. The *International Covenant on Economic, Social and Cultural Rights* contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment.

IV. CONSTITUTIONAL SAFEGUARDS AGAINST SEXUAL HARASSMENT AT WORKPLACE

The Constitution of India ensures and guarantees every individual the right "to practice any profession, or to carry on any occupation, trade or business" as enshrined under Article 19(1) (g). Every woman has a constitutional right to participate in public employment and this right is denied in the process of sexual harassment, which compels her to keep away from such employment. Sexual harassment of woman at the place of work exposes her to a big risk and hazard which places her at an inequitable position vis-à-vis other employees and this adversely affects her ability to realize her constitutionally guaranteed right under Article 19(1) (g).

Sexual harassment of women at workplace is also a violation of the right to life and personal liberty as mentioned in Article 21 that no person shall be deprived of his life or personal liberty. Right to livelihood is an integral facet of the right to life. Sexual harassment is the violation of the right to livelihood. For the meaningful enjoyment of life under Article 21 of the Constitution of India, every woman is entitled to the elimination of obstacles and of discrimination based on gender. Since the 'Right to Work' depends on the availability of a safe working environment and the right to life with dignity, the hazards posed by sexual harassment need to be removed for these rights to have a meaning.

The preamble of the Constitution of India contemplates that it will secure to all its citizens – "Equality of status and opportunity." Sexual harassment vitiates this basic motive of the framers of the constitution.

The concept of gender equality embodied in our Constitution would be an exercise in ineffectiveness if a woman's right to privacy is not regarded as her right to protection of life and liberty guaranteed by Article 21 of the Constitution of India. In view of the fact that sexual harassment of women at the workplace violates their sense of dignity and the right to earn a living with dignity, it is absolutely against their fundamental rights and their basic human rights.

V. DEVELOPMENT OF LAW ON SEXUAL HARASSMENT IN INDIA

a. The Vishaka Judgement

Workplace sexual harassment in India was for the very first time recognized by the Supreme Court of India in its landmark judgment of Vishaka & Ors vs State of Rajasthan & Ors. Vishaka and other women groups filed Public Interest Litigation against State of Rajasthan and Union of India to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. The petition was filed after Bhanwari Devi, a social worker in Rajasthan was brutally gang raped for stopping a child marriage. The Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The guidelines were:

- i. "It shall be the duty of the employer or other responsible persons in workplaces or other institutions to **prevent or deter** the commission of acts of sexual harassment and to **provide the procedures** for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
- ii. Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:
 - (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
- iii. All employers or persons in charge of workplace whether in the **public or private sector should take appropriate steps** to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
 - (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
 - (b) 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.
 - (c) As regards private employer's steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
 - (d) 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 workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- iv. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
- v. Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

- vi. Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.
- vii. The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.
- The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.
- The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.
- The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.
- viii. Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.
- ix. Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.
- x. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.
- xi. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector."

b. Post Vishaka Developments

Pursuant to Vishaka judgement, the Central Civil Services (Conduct) Rules 1964/130, were amended in 1998 to incorporate r. 3C131 which prohibits sexual harassment of working woman.

The first case before the Supreme Court after Vishaka in this respect was the case of Apparel Export Promotion Council v. A.K Chopra. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment.

Further the apex court in its judgement in **Medha Kotwal Lele & Ors. V. Union of India & Ors** took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing State Governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. Not being satisfied, it directed States to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines. Finally, the Supreme Court asserted that in case of a non-compliance or non-adherence of the Guidelines, it would be open to the aggrieved persons to approach the respective High Courts. The apex court also directed that the complaints committee as envisaged in the Vishaka judgement will be deemed to be an inquiry authority for the purposes of Central Civil Rules, 1964 and the report of the complaints committee will be deemed to be an inquiry report under those rules.

In pursuance of this direction, the Central Government (Department of Personnel and Training) has amended Central Civil Services (Classification, Control and Appeal) Rules, 1965, R. 14, sub-r. (2) to incorporate the necessary provision.

c. Amendment in IPC Post Nirbhaya Case in 2013

- Section 354A. Sexual harassment
- Section 354B. Forcing a woman to undress.
- Section 354C. Watching or capturing images of a woman without her consent (voyeurism).
- Section 354D. Following a woman and contacting her or trying to contact her despite her saying she does not want contact. Monitoring a woman using the internet or any other form of electronic communication (stalking).

d. ***From Guidelines to Act: Salient features of the POSH Act Scope:***

Effective from April 23, 2013; the Act is applicable to the 'whole of India'. As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.

The POSH Act applies to both the organized and unorganized sectors in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

The definition of an 'employee' under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

While the Vishaka Guidelines were confined to the traditional office setup, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an 'extended workplace'. As per the POSH Act, 'workplace' includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.

- i. ***Committees for complaints:*** An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum. The POSH Act requires an employer to set up an 'internal complaints committee' (ICC) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The ICC will be a 4-member committee under the Chairpersonship of a senior woman employee and will include 2 members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third party member (NGO etc.) as well.

At the district level, the Government is required to set up a 'local complaints committee' (LCC) to investigate and redress complaints of sexual harassment from the unorganized sector or 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 LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

A District Officer notified under the Act will constitute LCC. LCC will be a five member committee comprising of a chairperson to be nominated from amongst eminent women in the field of social work or committed to the cause of women, one member from amongst women working in block/taluka/tehsil/municipality in the district, two members of whom at least one shall be a woman to be nominated from NGOs committed to the cause of women or a person familiar with the issues related to sexual harassment provided that at least one of the nominees should preferably have a background in law or legal knowledge. The concerned officer dealing with the social welfare or women and child development shall be an ex officio member.

- ii. ***The Process for filing of Complaints:*** A complaint of sexual harassment can be filed within a time limit of 3 months. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same. The Act has a provision for conciliation. The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent, however this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. Further, if any of the conditions of the settlement is not complied with by the respondent, the complainant can go back to the Committee who will proceed to make an inquiry. The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days. In case the complaint has been found proved, then the Committee can recommend action in accordance with the provision of service rules applicable to the respondent or as per the rules which will be prescribed, where such service rules do not exist. In case the allegation against the respondent has not been proved then the Committee can write to the employer/district officer that no action needs to be taken in the matter.

- iii. ***Punishments:*** The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;
- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator; and
- v. feasibility of such payment in lump sum or in instalments. In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

iv. **Employer's Duties and 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. organise 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 any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

v. **Non- disclosure of Identity of Victims:** The Act prohibits disclosure of the identity and addresses of the aggrieved woman, respondent and witnesses. However, information regarding the justice secured to any victim of sexual harassment under this Act without disclosing the identity can be disseminated.

VI. IMPACT OF SEXUAL HARASSMENT ON THE VICTIMS:

The impact of sexual harassment can vary. In research carried out by the EU Fundamental Rights Agency, 17,335 female victims of sexual assault were asked to name the feelings that resulted from the most serious incident of sexual assault that they had encountered since the age of 15. 'Anger, annoyance, and embarrassment were the most common emotional responses, with 45% of women feeling anger, 41% annoyance, and 36% embarrassment. Furthermore, close to one in three women (29%) who has experienced sexual harassment have said that they felt fearful as a result of the most serious incident, while one in five (20%) victims say that the most serious incident made themselves feel ashamed of what had taken place. In other situations, harassment may lead to temporary or prolonged stress or depression depending on the recipient's psychological abilities to cope and the type of harassment and the social support or lack thereof for the recipient. Harnois and Bastos (2018) show an association between women's perceptions of workplace sexual harassment and self-reported physical health. Psychologists and social workers report that severe or chronic sexual harassment can have the same psychological effects as rape or sexual assault. For example, in 1995, Judith Coflin committed suicide after chronic sexual harassment by her bosses and co-workers. (Her family was later awarded six million dollars in punitive and compensatory damages.) Victims who do not submit to harassment may also experience various forms of retaliation, including isolation and bullying.

As an overall social and economic effect every year, sexual harassment deprives women from active social and economic participation and costs hundreds of millions of dollars in lost educational and professional opportunities for mostly girls and women. However, the quantity of men implied in these conflicts is significant.

VII. CONCLUSION:

India is rapidly advancing in its developmental goals and more and more women are joining the work force. The recognition of the right to protection against sexual harassment is an intrinsic component of the protection of the women's human rights. Government should make separate laws dealing with this issue. It should also realize that women worker also constitute a part of working population in India and it's the duty of the government to provide them security at work. New strategies should be made by the employers and managers to protect the organisation from this evil. Government and employers should ensure that women should be treated equally and gender discrimination should not take place at the workplace. Effective implementation of the policies can reduce the manifestation and mutilation of the sexual harassment to the minimum. One organisation can alter its approach to handle sexual harassment by viewing other organisations tactic. This will reduce or eliminate glitches caused by this harmful transgression. Government should

understand that separate laws may not bring about equality in gender relations but a law dealing with sexual harassment would provide women immense support in their struggle.

It is all a step towards providing women independence, equality of opportunity and the right at work with dignity. Sexual harassment at the workplace is a social challenge that needs to be addressed. It is important to enhance the awareness of employers and employees on the existence of forms of sexual harassment at the workplace, preventive measures, and legal framework on preventing and addressing sexual harassment. Dissemination and awareness raising activities should be regularly conducted and evaluated in order to improve best practice on how to address sexual harassment in the workplace, and also to forewarn and inform of forms of sexual harassment to enable potential victims to avoid them. Enhancing training courses on sexual harassment and providing documentation or a handbook on the prevention of sexual harassment at the workplace can help in combating it.

“While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman.”

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