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# GUARDING FEMALE EMPLOYEES AGAINST SEXUAL HARASSMENT IN WORKPLACE

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## I. ABSTRACT

Traditionally, the man was responsible for hunting and performing duties outside the four walls while the woman was responsible for overseeing affairs within the four walls. But with increasing formal education for females, the female workforce too increased creating parity between genders in the working class. The increased participation of females in offices, factories, and mines also created a need for a separate mechanism for speedy redressal of abuse of sexual nature at the workplace. Sexual harassment leads to frequent dropouts by females and affects the productivity of female employees. The lawmakers in the interest of economic growth devised enactment to provide a safe work environment for females in both organized and unorganized sectors. The framers of the Constitution provided for safeguarding for females in all walks of life. Additionally, the Indian Penal Code along with Criminal Amendment Act 2013, expanded the definition of sexual harassment and made it a criminal offence.

## II. KEYWORDS

Sexual Harassment, POSH, Article 15, Constitution of India, ICC, She-box

## III. INTRODUCTION

A popular Chinese proverb states that Women hold half of the sky. This statement denotes that women who constitute half of the workforce are now prominently visible in the working population. The female workforce is seen working actively in all sectors and industries. The sectors which earlier were male-dominant are also being occupied by women.

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The growth of women in these sectors bothers the anti-social elements of the society and they rely on illegal acts to hinder the growth of women. It is right that any society that fails to harness the creativity and energy of women is at the greatest disadvantage in contemporary society. It becomes the primary duty of the State in modern democracies to protect women from any probable abuse.

It is necessary to ensure through State policies that the women of the country do not opt out of jobs because of an unsafe environment, or any form of harassment, abuse, or sexual assault present at the place of work. The objectification of women, physical abuse, and mental torture in the workplace violate basic human rights and affect the quality of work done. It can be seen in a form that the unsafe workspaces may not allow the women to perform to their fullest potential which ultimately affects the quality of work, income of individuals, and the annual national product for that year.

#### **IV. RESEARCH OBJECTIVES**

- To study the concept of Sexual harassment in light of the constitutional framework and the case of *Vishaka & Ors v. State of Rajasthan*
- To trace the influence of *Vishaka & Ors v. State of Rajasthan* on providing guidelines to redress the evil of sexual harassment in the workplace.

#### **V. RESEARCH QUESTIONS**

- What constitutes the offense of sexual harassment in the workplace?
- What is the impact of Vishakha Guidelines on providing safety to the offense of sexual harassment at the workplace?

#### **VI. RESEARCH HYPOTHESES**

- The increase in the female workforce created the problem of sexual harassment in the workplace. Thus, the need for new laws to deal with the problem of sexual harassment in the workplace occurred
- The law dealing with sexual harassment also aims at creating a safe environment for the female workforce.

## **VII. RESEARCH METHODOLOGY**

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature.

Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

## **VIII. LITERATURE REVIEW**

The research paper studies the concept of sexual harassment which is taken from the provisions of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The paper deals with various provisions of the POSH Act where the Internal Committee and Local Committee are discussed as institutions for redressing complaints of sexual harassment.

The provision of the Indian Constitution backing up the law protecting women from any sexual harassment at workplace is discussed. Commentaries written by Dr. DD Basu, Dr. MP Jain, and JN Pandey are referred to understand the constitutional framework for women. The paper refers to various case laws that shaped the legal framework for safeguarding the female workforce and analyzes the law in context with the help of case laws and statutory provisions.

## **IX. CONCEPT OF SEXUAL HARASSMENT**

The need to provide equality of opportunity and equal status in the workplace made it necessary to enact a new enactment for the protection of women in the workplace. The major aim of this Act was to provide a safe environment and secure working women who are free from any sexual harassment for women.

In the 1997, Vishakha case<sup>2</sup>, the Supreme Court highlighted the importance of the need to define the concept of sexual harassment. The concept of sexual harassment can be a very subjective term that may differ from time and situation. So when this act was first enacted the concept, of defining the offence of sexual harassment was placed as a priority.

The term sexual harassment includes any one or more of the following unwelcome acts or behavior, whether directly or by implication, namely,

- Physical contact or advances,
- Demand, or a request for sexual favors
- Making sexually colored remarks
- Showing pornography, or
- Any other unwelcome physical verbal, or nonverbal conduct of a sexual nature<sup>3</sup>

While studying the concept of sexual harassment, it is important to know that sexual harassment in the workplace needs to be

- Sexual in nature.
- Always unwelcomed and
- this experience can be subjective

The impact and not the intent that matters in these cases and this always occurs in the matrix of power. The woman may experience a single instance of sexual harassment or a series of incidents over a period of time, which may constitute this offense.

The Hon'ble High Court of Delhi endorsed the view that sexual harassment is subjective, and the experience may at times paralyze the vision of the victim. The Court held that complete understandings of the complainant's view, require an analysis of different perspectives of men and women. The conducts of many men are considered an objectionable act at times from the end of women. Men tend to view

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<sup>2</sup> Vishaka & Ors v. State Of Rajasthan AIR 1997 SUPREME COURT 3011

<sup>3</sup> Section 2(n) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

some of the forms of sexual harassment as harmless social interaction to which oversensitive women will object.

The male view depicts sexual harassment as comparatively harmless and amusing for the men who are rarely victims of this offense. While discussing the offense of sexual harassment, sexual conduct is often studied in a vacuum without a full appreciation of the social settings and underlying threat of violence that women may perceive.<sup>4</sup> So the courts or committees dealing with sexual harassment must appreciate social factors while deciding the sexual harassment cases.

### A. Types of Sexual Harassment at the Workplace

Sexual harassment at the workplace is often characterized by the following two types of inappropriate behaviour's:

- **Quid pro Quo:** The express or implied promise to provide preferential treatment in return for sexual favours constitutes this type of harassment. The change in employment status in the future or any detrimental treatment is included in this form of harassment.
- **Hostile or Toxic Work Environment:** Under this type of sexual harassment, the employee who is subject to such harassment is either threatened or intimidated at work. The work environment at the workplace is hostile and offensive. Any employees who come forward and speak up against such harassment are either humiliated or seen in a very low light by co-workers. Work environment-related sexual harassment often affects the health and safety of the employee in the long run.<sup>5</sup>

### B. Constitutional Safeguards

The framers of our Constitution realized that the safety of women in public spaces is necessary and inserted provisions, especially for women. **Article 15** is a safeguard against any gender-based discrimination. Any forms of discrimination based on

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<sup>4</sup> Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

<sup>5</sup> Types of Sexual Harassment in the Workplace, inspiredlearning(2020), <https://inspiredelearning.com/blog/types-of-sexual-harassment/> (last visited Aug 19, 2024).

gender by even private entities were challenged in court. Clause (3) to Article 15 acknowledges the special needs of women and allows beneficial legislation for women including maternity benefits, etc.

- **Article 16:** Protects such discrimination during employment and place of work. Any policy at the workplace which is detrimental to the female workers is struck down. The incidents of sexual harassment at the workplace amount to a violation of clause (2) of Article 16. <sup>6</sup> Article 16(2) is the crusade for gender justice in the workplace. Any act which obstructs the efficient working of a female worker at the workplace and is sexually colored is considered a violation of Article 16(2)<sup>7</sup>
- **Article 43:** Provided for proper liveable wages and wages equal to the work done by their male counterparts for female workers. The term 'wage' includes not mere essentials of food, shelter, and clothing but also includes education of children, healthcare schemes and insurance covers against mishaps.<sup>8</sup> The wages and pensions are not only compensation for loyal services but also a measure of socio-economic justice by providing extra benefits needed due to gender and age considerations. The woman working must be provided with a safe environment and be provided with proper infrastructure to redress the sexual harassment, if any, at the workplace. <sup>9</sup>
- **Article 45:** Deals with maternity and early childcare for women and extends this mandate to employers for their female employees.

## X. VISHAKHA GUIDELINES

The foundation of the anti-sexual harassment at workplace enactment was laid in the year 1997, with the Vishakha guidelines. The Vishakha case has interesting facts, where the social worker was raped brutally. The year 1985, Bhawani Devi, worked in the village of Bhatari, Rajasthan to eradicate child marriages. In 1987, a recognized

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<sup>6</sup> National Fertilizers Ltd v. Somvir Singh AIR 2006 SC 2319

<sup>7</sup> Apparel Export Promotion Council v. A K Chopra AIR 1999 SC 625

<sup>8</sup> Edward Mills Co. v. Ajmer AIR 1955 SC 25

<sup>9</sup> D S Nakara v. Union Of India AIR 1983 SC 130

organization employed her for her services and investigation of various social evils against women. In 1992, she went to stop the marriage of a child.

Despite child marriage being forbidden, the residents of the village expressed their displeasure and ignored the program. But the Gujjar family made a plan, and they organized the marriage for their younger daughter. While doing her job, i.e. try to convince the parents not to execute them.

The efforts were put in vain and the family decided to go ahead with the wedding. So, the aforesaid marriage was happening. On May 5, 1992, the SDO and the DSP were also informed. The locals later, discovered that the police visit was caused by a Complaint made by Bhawari Devi. Bhawari Devi was boycotted and faced hate from the community. She had to quit her job. On September 22<sup>nd</sup>, 1990, men of Gujjar family committed gang rape of Bhawari Devi. The accused also stabbed her husband.

The police later in the investigation tried to avoid, lodging their complaint. The medical examination of the rape victim, Bhawari Devi was postponed by fifty-two hours. The medical examination and investigator on the one hand did not specify any rape commission to the investigator but instead focused on the perpetrator's age.

All the accused were acquitted by the trial court, despite the lack of substantial proof, and with the support of local MLA Meena.

However, several women activists at the National level backed Bhawari Devi and filed a PIL before the Honorable Supreme Court. The women's rights organization launched, this PIL and focuses on the implementation of women and rights in workplace under the Articles 14 15, 19, and 21 of the Indian Constitution. The necessity to protect women from any sexual harassment was the core in this case.<sup>10</sup>

### **A. Judgment in Vishakha Case**

- The Supreme Court in the Vishaka guidelines recognized the need for a law that will prevent sexual harassment at work. This enactment will not only act

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<sup>10</sup> Vishaka and others v State of Rajasthan AIR 1997 SC 3011 para 2



as a preventive enactment but also provide women with a safe and healthy environment, which is needed when such offenses are committed.

- The Court also emphasized the fact that there is a need for specific offenses to be provided under the Indian Penal Code.
- The Court also pointed out the enactment of appropriate and effective legislation which will especially handle the cases of Sexual Harassment in the Place.<sup>11</sup>

The Apex Court gives reference to the Beijing Set of Guiding Principles, which states that whenever there is a vacuum of law, then the Judiciary can act as the saviour of the citizens the Judiciary. While being the custodian of citizens, the judiciary can establish guidelines to govern particular offenses.

The Hon'ble Court said that under the Articles of Convention Elimination of All Forms of Discrimination against Women (CEADW), such safeguards are enshrined. It is provided in **Article 11 (1) (a) and (f)** that the State can take appropriate measures to eliminate discrimination against women while dealing with the field of employment.

Reliance was placed on **Article 24** which put an obligation that the state to undertake and adopt all necessary measures at the national level, to achieve the full realization.

The Supreme Court under Article 141 of the Indian constitution provided these guidelines which acted for a long time as a prohibitory law for Sexual Harassment in Workplace.<sup>12</sup>

## **B. Bodies dealing with the Prevention of Sexual Harassment at the Workplace**

Post 17 years of the Vishaka Guidelines, the Parliament of India enacted the Prevention of Sexual Harassment Act 2013. The provision of this Act particularly defines the word sexual harassment, the places which could be considered as workplace and aggrieved member. Additionally, it creates a mechanism for redressal

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<sup>11</sup> Ibid, para 7

<sup>12</sup> Ibid, para 12

of complaints. The Act also has a teething provision against any false or malicious charges.

### **C. ICC**

Every employer is required to constitute an internal complaint committee at every office or branch, which has more than 10 employees. The Internal Complaints Committee has the power of a civil court and is required to provide for conciliation before initiating any inquiry if requested by the complainant. The penalty has been prescribed under this act if the employer fails to comply with the provision of this act and establishes an internal complaint committee.

### **D. LC**

The state governments are also required to establish the office of local complaint committees at every district office, which enables women in the unorganized sector or small establishments to work in an environment, which is free from sexual harassment. The Constitution of the internal complaint committee sends a powerful message that each organization is striving toward an environment that is safe for women.

Nevertheless, it is important to say that the ICC is a mandate of the POSH Act and non-abiding of this provision attracts heavy fines including cancellation of the license of the conducting the said business operation.

### **E. She- Box**

One of the initiatives started by the Ministry of Women and Child Development was the launching of a sexual harassment electronic box known as She-Box. The electronic single window application allows access to every woman, irrespective of her work status; whether working in an organized or unorganized sector; private or public sector. The application facilitates the registration of complaints related to sexual harassment by any woman who's facing sexual harassment at the workplace can register their complaint through this portal. If the internal complaint committee fails

to address the issue, once a complaint is submitted in the She-Box, it is directly sent to the concerned authority having jurisdiction to take action in this matter.<sup>13</sup>.

## **F. JS Verma Committee Report**

In 2012, the Justice Verma Committee on sexual harassment was established. This committee was established as a response to the Nirbhaya incident of December 2012 and it submitted its recommendation on strengthening the law to curb the crimes against women. Other recommendations included as following:

- The ICC's decisions cannot be treated at parity with those of the court
- The procedure used for investigating sexual harassment complaints can be that of the court or be chosen by the ICC or LC itself
- The work environment must be comforting for the victims of such harassment as ICC is often seen as burying the sexual harassment complaint.
- The Committee must be chosen judiciously and penalized for
  - Facilitating harassment
  - Permitting environment for sexual misconduct
  - Failure to disclose the existing policies for tackling harassment in the workplace
  - Failure to report this incident to the appropriate authority
  - Failure to pay compensation to the victim
- The provision to penalize women who make harassment complaints often nullifies the object of this Act
- The concerns over transfers and timely disposal of complaints were also discussed in the Committee Report.<sup>14</sup>

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<sup>13</sup> Ministry Of Women & Child Development, shebox.nic.in , (August 20, 2024)

<sup>14</sup> Justice Verma Committee Report Summary, <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>(August 20, 2024)

## **XI. CONCLUSION, SOLUTIONS, SUGGESTIONS & RECOMMENDATIONS**

The increasing number of female participations in the national economy has created the need for protective enactment which prohibits any actions detrimental to the dignity of the worker. The Act prohibits and prevents such acts along with penalizing these prohibited conducts.

ICC aimed to provide timely and cost-efficient remedies to such victims. The overburdened courts often are unable to provide quick remedies, so these Internal Committees and Local Bodies help the victim to redress his wrongs.

It has been almost two and a half-decade of Vishakha Guidelines, but the evil of sexual harassment is still prevalent. There is low awareness and underreporting of incidents of sexual harassment in the workplace due to social stigma. The ICC often mishandles the complaints and tries to push these complaints under the rug. Most of the companies are either ineffective in implementing the provisions of the POSH Act or fail to comply with the requirements of the Act.

A substantive number of the workforce has to leave the job due to a toxic environment which often blames the victim for the misdeed. Additionally, the law fails to address the problem of males who are harassed sexually.

The POSH Act though is a strong enactment in tackling the problem but is still facing infrastructural drawbacks. The desire to have judicial members in the ICC is often debated. The presence of such judicial members will provide legal backing and make the decisions easy to execute.

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- Vishaka and others v State of Rajasthan AIR 1997 SC 3011 para 2
- Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

## **D. Statutes Referred**

- Constitution of India 1950
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Criminal Amendment Act, 2015