



Sexual harassment at workplace in India

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Abstract

Sexual harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative as it affects women's right to life and livelihood. It is a violation of fundamental rights of a woman to equality as per Articles 14 and 15 & her right to live with dignity enshrined in Article 21 of the Constitution of India. The present study provides an intensive background of sexual harassment of women in India. The origin of the sexual harassment has been taken from Bhanwari Devi case and an account of Vishaka and Ors. v/s Union of India 1997 judgment is also mentioned in the current study. In India, for the first time in 1997, a petition was filed in the apex court to enforce fundamental rights of working women, after the brutal gang rape of Bhanwari Devi a social worker from Rajasthan. Apart from the Vishaka guidelines in the case of Vishaka & Ors. v. State of Rajasthan, Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as POSH Act) has also been enacted. The paper critically analyses the present law in India on Sexual Harassment with new demissions and preventives measures to curb the sexual harassment and other violations against the women at workplace. Sexual harassment has shown a steady increase from last decade to the present scenario with 20% increased in total number of complaints in the year 2021-2022 and which resulted in violation of basic immunities of women at workplace.

Keywords: Sexual harassment, workplace, vishaka guuidlines, women, India

Introduction

In India, sexual harassment at the workplace is one of the most common crimes against women and is also seen as unconstitutional invading the fundamental rights of women. Occasionally women raise their voices against such discrimination, but more often than not is buried with time. The necessity for preventing such injustice and suitably dealing with such cases The Sexual Harassment Act 2013 was bought into effect. Sexual harassment is a recurring problem around the globe. Different nations have taken different measures to deal with the consequences of such a problem. Continuous development of policies is observed. Nations or companies are dealing with the topic by either reacting or pro-acting to the salient situations. India's Constitution aims at equality under Art.15 and provides for special laws to be made for the depressed classes and women. The status of women even today is not at par with their male counterparts. We certainly require laws that support women to take their rightful place in society. Gender-specific laws in India are made to ensure equity between the genders. The Sexual Harassment of Women at Workplace Act, 2013 is a welcome addition amongst the class of such laws. It has received both widespread praise and flak in recent times. The research paper is aimed at analysing the effect that this law has had on society. Does it aim to seek answers to potent questions of whether the law has helped cement the place of women in society? Have there been any ill effects or not? In the context of sexual harassment, judicial activism reached its pinnacle in Vishakha v. State of Rajasthan (Vishakha). The judgment was unprecedented for several reasons: the Supreme Court acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law;

the Supreme Court provided the first authoritative definition of 'sexual harassment in India, and confronted with a statutory vacuum, it went creative and proposed the route of Judicial Legislation.

The History Behind Sexual Harassment at the Workplace

Sexual harassment at the workplace is widespread. Women all around the world have faced instances of sexual harassment, calling for a strong law to curb these acts. In India, the framework for the Sexual Harassment at Workplace law was laid down in the landmark judgment of the Supreme Court in Vishaka v. State of Rajasthan (1997). In 1992, Bhanwari Devi, a Dalit woman who was a social worker employed with the Rural Development Programme of the Government of Rajasthan was gang-raped. This highlighted the extent of sexual harassment incidents in India's workplaces. It struck a chord with the nation and revealed the hazards working women face in the workplace. The Supreme Court framed guidelines and issued directions to the Union of India for a law to combat workplace sexual harassment. The main intention of these guidelines was to provide a platform for redressal and grievance mechanisms against workplace sexual harassment. It was these guidelines that motivated the formation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH). The Act is very important as it discusses the various instances of sexual harassment and how a woman can complain against this kind of behaviour.

The Vishaka Guidelines drew from them in the following ways:

1. General Recommendation 19 to the Convention on Elimination of All Forms of Discrimination against Women (CEDAW): India, which is a party to this convention, has taken from it aspects of equality of women in the workplace, gender-specific violence, and unwelcome sexually-determined behaviour and adopted them into the POSH Act.
2. International Labour Convention on Discrimination (Employment and Occupation) Convention (No. C111): India ratified this document on 3 June, 1960. Through this Convention, India has an obligation to prohibit and prevent any gender-based discrimination in the workplace. Early developments in the Statute Before the introduction of the POSH Law, there was no statutory remedy that directly addressed workplace sexual harassment except the Indian Penal Code, 1860. The only sections under the Indian Penal Code that could be used for sexual harassment are under:
 - Section 354 (Outraging the modesty of a woman) and
 - Section 509 (Insulting the modesty of a woman).
 Women who were sexually harassed at the workplace had to go to the police and file a complaint. The application of the Indian Penal Code can be seen in the case of Rupan Deol Bajaj vs. K.P.S. Gill (1995), where a senior IAS officer was sexually harassed by a superior officer and the recourse to the limited provisions of the IPC under Section 354 and Section 509 was not found sufficient by the High Court. This gap in the law was very apparent and the need for further reforms on sexual harassment was obvious. It was in the light of instances such as these that the Supreme Court set aside the judgment in the Rupan case. The unfortunate circumstances in the Vishaka case finally addressed workplace sexual harassment, its prevention, and redressal mechanisms

What is sexual harassment?

The Vishaka Guidelines called for the need to define sexual harassment. The guidelines did this, taking a definition verbatim from the General Recommendation 19 to the CEDAW Convention.

‘Sexual Harassment’ includes such unwelcome sexually-determined behaviour (whether direct or indirect) as:

- Physical contact and advances
- A demand or request for sexual favours
- Sexually-coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.
- Any sexual acts carried out that are directly related to the victim’s employment or work
- Conduct that can be humiliating for the woman
- Any sexual conduct that affects the health and safety of a woman. The creation of a hostile working environment and non-consensual advances or requests of a sexual nature both amount to sexual harassment. With the advent of Section 2 (n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India finally had an explanation for what constituted sexual harassment. You can see in detail what the Act refers to when it comes to sexual harassment. Only women are protected from sexual harassment at the workplace. Men in India cannot file a case of sexual harassment at the workplace

against another male or female employee. Any working woman is protected from being subjected to sexual harassment at the workplace if she falls under certain categories.

What is a workplace?

As per Section 2(o) of 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. In the case of Saurabh Kumar Mallick v. Comptroller & Auditor General of India 151 (2008), three criteria were laid down to determine what would constitute a workplace for the POSH Act to apply:

- Proximity from the place of work
- Control of the management over the place/residence where the working woman is residing and
- That the residence be an extension or contiguous part of the working place.

 Impact of cases in India After the Vishaka case came two important cases which strengthened the legal framework for workplace sexual harassment. In the Apparel Export Promotion Council v. A.K. Chopra (1999), the Supreme Court upheld the dismissal of a superior officer of the Delhi-based Apparel Export Promotion Council for sexual harassment. The court enlarged the definition of sexual harassment to state that “physical contact is not always essential for an act amounting to workplace sexual harassment.” Sexual harassment is seen as any ‘unwelcome’ act. Later, in the Medha Kotwal Lele & Ors v. Union of India & Ors (2013), the Supreme Court placed emphasis on States to follow the Vishaka Guidelines and to ensure its effective implementation. Further, the court asserted that if the guidelines are not complied with, then the aggrieved persons or the victim could approach the High Courts. Impact of the POSH Law The effect of the law is three-fold:

1. Prevention of a hostile work environment: When a woman is exposed to sexual advances and harassment it affects her sense of security, health, and mental stability. In instances where it occurs daily, it can damage a woman on a long-term basis, and this psychological damage may lead to an unstable, unhealthy life. The POSH Law and various judgments have been a saviour in this regard.
2. Understanding Unwelcome behaviour: The debate on advances being welcome and unwelcome is a never-ending loop. Some state that it is subjective in nature based on the ‘reasonableness’ of a woman, but a test to determine if unwelcome behaviour has taken place was deemed necessary after the POSH Law. In the Report of the Committee on Amendments to Criminal Law headed by the late Justice J.S. Verma (Author of the VishakaJudgement), unwelcome behaviour was discussed as follows: “However, it is important to note that the definition requires some clarification since any interpretation of the word “unwelcome” as contained in the said definition must give due weight to both objectives as well as subjective criteria in order to ensure that women of differing perceptions and comfort levels are given appropriate protection. Therefore, we suggest that after the definition of “sexual harassment”, the following explanation may be inserted: “In determining whether the behaviour or act complained of is unwelcome, one of the factors to be given due

weight shall be the subjective perception of the complainant.”

3. **Quid Pro Quo Harassment:** The key element of Quid Pro Quo Harassment is when a demand for a sexual favour is requested based on a threat of consequences for the job at hand. The person making threats is usually placed at a higher rank and the consequences may range from demotion in position or wages to loss of maternity benefits etc. For example, Akshay tells Radhika to perform a sexual act. Radhika refuses to do so, but Akshay tells her that she will get demoted and earn a lower salary if she doesn't. This is a clear-cut example of Quid Pro Quo Harassment. The Vishaka judgement recognized this important factor. Now, under the POSH Law, all the woman has to prove is that the threat was made in the first place.

New Dimensions to Workplace Sexual Harassment

Now, times are changing and technology is playing a very crucial role in our day-to-day activities. For instance, in order to gain sexual benefits, if Anil threatens to circulate a naked picture of Remya via social media in the office, it amounts to an act which is not only sexual harassment but also a form of online abuse where he is outraging her modesty. Cases like this should definitely be filed with the Internals Complaints Committee set up by the organization, as the form of sexual harassment need not always be physical. In today's world, it can be through online platforms and social media Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013.[1]The Bill got the assent of the President on 23 April 2013.[2] The Act came into force on 9 December 2013.[3] This statute superseded the Vishaka Guidelines for Prevention Of Sexual Harassment (POSH) introduced by the Supreme Court (SC) of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute.[4][failed verification][5] Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees needs to implement it.[6] According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013.[7] The government has threatened to take stern action against employers who fail to comply with this law. *An Act to provide protection against sexual harassment of women at the workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment; AND WHEREAS the protection against sexual harassment*

and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India; AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Major features

- The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The Act also covers concepts of 'quid pro quo harassment and 'hostile work environment' as forms of sexual harassment if it occurs in connection with any act or behaviour of sexual harassment.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.
- An employer has been defined as any person who is responsible for management, supervision, and control of the workplace and includes persons who formulate and administer policies of such an organisation under Section 2(g).
- While the "workplace" in the Vishakha Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, departments, offices, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve telecommuting will get covered under this law.
- 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.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry if requested by the complainant.
- The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.
- The Act requires employers to conduct education and sensitization programs and develop policies against sexual harassment, among other obligations. The objective of Awareness Building can be achieved through Banners and Posters displayed on the premises, eLearning courses for the employees, managers, and Internal Committee members, Classroom training

sessions, Communication of Organizational Sexual Harassment Policy through emails, eLearning or Classroom Training. It is recommended that the eLearning or Classroom Training be delivered in the primary communication language of the employee.

- Every organization must file an Annual Report to the District Officer every calendar year as prescribed in Rule 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000. Repeated violations may lead to higher penalties and cancellation of license or deregistration to conduct business.
- Government can order an officer to inspect workplaces and records related to sexual harassment in any organization.
- Under the Act, which also covers students in schools and colleges, as well as patients in hospitals, employers and local authorities, will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees

Failure in implementing the laws relating to sexual harassment

As per the Vishakha guidelines, it is made compulsory to constitute a complaint committee in every workplace but private companies hardly institute them while the government organizations just do it on paper. The organizations in which this committee exists face other serious problems as it is been reported by victims that the committee members do not even have the clue of their responsibilities, powers, and duties and so this rarely leads the victim to get justice. The attitude of the employer is deep-seated as they have a presumption that this cannot happen in their organization and so the women's complaints end up with nothing. People use to make fun of her and this makes her incapable of getting justice or being heard properly. Section 354 (on which the ruling in the Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh Gill was based) and section 509 of IPC is the criminal provision applied in most of the sexual harassment cases, but yet these provisions have only limited effectiveness. Therefore, we can say that there is no strong legislative stand against sexual harassment in the workplace. A number of bills (by the national commission for women, women's organizations and the government) have been drafted but there is still confusion on what bill would serve the purpose better. At present, the draft Protection of Women against Sexual Harassment at Workplace, 2007 is pending with the ministry of women and child development. There are certain suggestions being made by women organizations to make changes in the bill:-

1. To provide for procedural training of members of the complaints committee.
2. To modify provisions of section 11 (no action will be taken if the allegation against the respondent is not true) and section 12 (if a local committee concludes that the allegation against the respondent is false then action will be taken against the complainant) of this bill.

Preventive Measures to Curb Sexual Harassment

Changing the law and changing workplace culture, however, are two different things. Today, decades after sexual harassment was declared illegal by the courts, it remains a stubborn presence in the workplace. But, the reality is that the prevalence of sexual harassment should no longer be surprising. Sexual harassment—such as unwanted sexual advances and other actions of a sexual nature used as a condition of employment, to interfere with an individual's work, or to create a hostile or intimidating work environment—has been an unfortunate part of the workplace for years. Most cases occur out of sight or behind closed doors; most victims are not famous and never have their stories told. More than 50% of young professionals in India face sexual harassment at workplace. Working professionals in India admitted to being subjected to inappropriate touching and physical advances taken at workplace. Women's Indian Chambers of Commerce and Industry's (WICCI) council of ethics the conclusions were based on 23,584 unique responses from 1,101 individuals and almost 81% of responses were below the age of 30 years. This year report included the workers of informal sectors and gig workers as well.

Yet, sexual harassment persists and, to achieve change, it is important to closely examine what is holding progress back. First, sexual harassment by definition invokes discussion about sex and intimacy, which are two issues that many people may be uncomfortable discussing in public. Few people want their motives or actions second-guessed or scrutinized for fear of being blamed, thus many victims choose to stay silent. Victims often are unwilling to come forward because they are concerned that their complaints will not be believed or that they will face retaliation.

Second, sexual harassment—as is the case with other forms of harassment—is often about power and taking advantage of a power imbalance. The sexual threats used to carry out harassment are the tools used to exert power over victims to make them feel weak and remind them of their lack of power within the workplace.

Third, sexual harassment requires a Fundamental change in workplace culture, which simply does not happen overnight. Establishing new standards and expectations of appropriate conduct to achieve systemic change can threaten the status quo and provoke resistance to change. Finally, underlying attitude and stereotypes about women, men, and their proper roles that are firmly ingrained in workplaces and individuals themselves influence sexual harassment. Such attitudes can infect workplaces and fuel harassment, and collectively, perpetuate a workplace climate where sexual harassment continues to thrive.

- a. Five Simple Steps to prevent sexual harassment at workplace_There must be well set up complaint communication channel at workplace: A direct communication with employees. A women should not feel obscure in complaining about the problems she is facing during her employment at workplace. Complaints regarding sexual harassment faced by women must take seriously by complaint committee. It is duty of complaint committee top keep the complaint confidential
- b. Get High-level management support : With the help and support obtain from high level Chief officer and Senior management for implementing a comprehensive strategy to address sexual harassment.

- c. Provide regular training and information sessions to all staff and management:

Conduct regular training sessions for all staff and management on sexual harassment and to make organizational policy related to sexual harassment which include regular surveys, schedule a meetings and providing the information. This training should be behavioral based which it must include increased knowledge and understanding of specific behaviors which may amount to sexual harassment. A regular monthly follow ups from employees about the training sessions and collecting information and making a written records regarding the complaints. Display anti sexual harassment poster on notice boards in common workplace area and distributing brochures. Every organization should conduct sexual harassment awareness training for both male and female employees. This mutual learning will help in creating an atmosphere of hostility and employees will feel comfortable. This training should also include the impacts of sexual harassment on women.

(d) To create positive workplace environment : To keep the confidentiality about complaint at workplace. Encouraging the high level support from the experts and senior managers. Every company must have zero tolerance attitude towards sexual harassment at workplace this will give a positive image about the company and support the current working female employee at work.

Conclusion

Sexual harassment at the workplace is highly prevalent in India and there is a need to provide a positive environment to the women workers. Government should make separate laws dealing with this issue. It should also realize that women workers also constitute a part of the working population in India and it's the duty of the government to provide them security at work. New strategies should be made by employers and managers to protect the organization 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 sexual harassment to the minimum. One organization can alter its approach to handling sexual harassment by viewing other organizations' tactics. 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. At last, we want to say that women should not accept anything as it is because now it's time to speak out against all the injustice done to them.

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