

Evolution of the Indian Law on Workplace Sexual Harassment

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Abstract: *Women in India are being the victims of various kinds of violence since long. Sexual harassment of women at workplace is one of the crimes against women which is increasing rampantly. However, legally speaking, the concept of sexual harassment was coined and acknowledged in the early 1970s when some specific cases relating to harassment of women at work became prominent in the West and also in India which made evident that women needed protection at workplace. Harassment of sexual nature is condemned as a form of violation of the Fundamental Right of Gender Equality and the Right to Life and Liberty enshrined in the Indian Constitution under Articles 14, 15, 19(1)(g) and 21 and the right to practice any profession, which includes a right to a safe environment free from sexual harassment. The protection against sexual harassment and the right to work with dignity are universally recognized Human Rights by International Conventions and instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which has been ratified on the 25 June, 1993 by the Government of India. The Supreme Court laid out guidelines, commonly known as the Vishaka Guidelines making it mandatory for the employers to provide for mechanisms to enforce the right to gender equality of working women. Following the Guidelines, the Government of India passed an Act to prevent and combat the occurrence of sexual harassment of women at workplace in April 2013, namely- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The object of this research paper is to throw light on the evolution of the Indian law on workplace sexual harassment and analyze the provisions of the Act since a legal framework is necessary to eliminate this social evil.*

Key words: *Sexual harassment, Workplace, Vishaka Guidelines.*

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I. INRODUCTION

Sexual harassment at the workplace is unfortunately, a routine scourge that affects the women in India due to structural patriarchy that still dominates our society. Nations are dealing with the problem by either reacting or pro-acting to the salient situations of harassment at workplace. Almost all the countries so far have prohibited sexual harassment at work through national legislation or labor codes. India became one of these countries in 2013 by enacting *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*.

Women in India have been guaranteed a number of rights by the Constitution of India. Harassment of sexual nature is condemned as a form of violation of the Fundamental Right of Gender Equality and the Right to Life and Liberty enshrined in the Indian Constitution under Articles 14, 15, 19(1)(g) and 21 and the right to practice any profession, which includes a right to a safe environment free from sexual harassment. The protection against sexual harassment and the right to work with dignity are universally recognized Human Rights by International Conventions and instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which has been ratified on the 25 June, 1993 by the Government of India. At the International level, the United Nations General Recommendation 19 to the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, 1979 defines sexual harassment of women as to include;

Such unwelcome sexually determined behavior as 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 contribution of India and the International Convention, CEDAW to which India is a signatory, decrees these acts and therefore, it is a prerogative of employers/administration of workplaces/institutions to cater to and mete justice to victims of such harassment. In India, it was the case of *Vishaka and Others v. State of Rajasthan and Others (AIR 1997 SC 3011)* that brought the issue to the public consciousness. Thus, the Supreme Court laid out guidelines, commonly known as the *Vishaka Guidelines* making it mandatory for the

employers to provide for mechanisms to enforce the right to gender equality of working women. The guidelines explicitly state the following;

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.

Since 1997, it was made mandatory for the employers in public organizations to have Redressal Mechanism System as prescribed by the Supreme Court, though its implementation could not be effectively ensured. The most important contribution of *Vishaka Guidelines* was in terms of a very comprehensive definition of 'sexual harassment', which had not been defined anywhere even in the Indian Penal Code. According to the *Vishaka Guidelines*, sexual harassment include such unwelcome sexually determined behavior (whether directly or by implication) as:

- Physical contact and advances;
- A demand or request for sexual favors;
- Sexually colored remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

These Guidelines were supposed to govern till the time an Act was passed by the Indian Parliament. Thus, following the guidelines, the Government of India passed an Act to prevent and combat the occurrence of sexual harassment of women at workplace in April 2013, namely- *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. The Act has endorsed many of the *Vishaka Guidelines* and is intended to include all women employees in its ambit, including those employed in the unorganized sector, as well as domestic workers.

Another very important legal provision that was brought by the Indian State in force is *The Criminal Law (Amendment) Act, 2013*. The Parliament enacted this Act only after the ghastly incident of Delhi rape case widely known as the *Nirbhaya Case* in December 2012. This Act introduced significant changes in the provisions under Indian Penal Code, making sexual harassment an expressed offence under Section 354A, which is punishable up to three years of imprisonment and or with fine. The Amendment also introduced new provisions declaring acts such as disrobing a woman without consent, stalking, acid attacks and sexual acts by person in authority as criminal offences.

II. EVOLUTION OF THE INDIAN LAW ON WORKPLACE SEXUAL HARASSMENT

The case of *Vishaka and Others v. State of Rajasthan in 1997 (AIR 1997 SC 3011)* has been credited with establishing sexual harassment as illegal in India. Ironically, it took 16 years for the Indian Parliament to enact *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act* and *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules* in 2013 after the Supreme Court of India's landmark judgement in *Vishaka and Others v. State of Rajasthan and Others*.

It began in 1992 when Bhanwari Devi, a social worker, was engaged by the state of Rajasthan to work towards the prevention of the practice of child and multiple marriages in villages. During the course of her work, she prevented the marriage of a less than one year infant girl in the community. Since her work was met with resentment, in September 1992 she was brutally gang raped by those very men in front of her husband while they were working in their fields. When she went for medical examination, the only male doctor in the Primary Health Centre refused to examine her. In addition, the doctor at Jaipur only confirmed her age without making any reference to rape in his medical report. Further, at the police station, Bhanwari Devi along with her husband suffered from more hostility and humiliation. The policemen asked Bhanwari to leave her lehenga behind as evidence and return to her village. Therefore, she wrapped the blood stained turban cloth of her husband and returned back to her village in the past midnight. Based on the facts of Bhanwari Devi's case, several women groups launched a campaign for justice for Bhanwari. In December, 1993, the High Court said; *It is a case of gang-rape which was committed out of vengeance.*

As part of this campaign, Public Interest Litigation (PIL) was filed by the *Vishaka* and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India to lay down guidelines to prevent sexual harassment of women at the workplace. The petition resulted in what are popularly known as the *Vishaka Guidelines*.

JUDGMENT OF THE SUPREME COURT: The judgment was given by a full bench of the Supreme Court on August 13, 1997; it was authored by the then Chief Justice of India J.S. Verma. The Supreme Court observed that:

- Equality in Employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace.

- Such incidents are a clear violation of the human rights under Article 14, 15, 19(1)(g) and 21 of the Indian Constitution.
- It was the fundamental right of every citizen to carry on any occupation, trade or profession depends on the availability of a safe working environment. Sexual harassment, thus, is also a violation of the right to live with human dignity, which was held to be a part of the affirmative dimension of Article 21 in *Francis Coralie v. Union Territory of Delhi*.
- Article 42 in the Directive Principles of State Policy creates a liability upon the State to secure just and humane conditions of work.
Therefore, in the landmark Judgment, 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). It included:
 - *A definition of sexual harassment.* The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct of a sexual nature. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.
 - *Shifting accountability from individuals to institutions*, i.e., the guidelines placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as the witnesses.
 - *Prioritizing prevention*; and
- Provision of an innovative redressal mechanism in the form of *Complaints Committee* which will look into the matters of sexual harassment of women at the workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a NGO expert on the issue to prevent any undue pressure on the complainant.

Therefore, one of the major historical changes in India came with the *Vishaka* Judgment that brought the plight of working women to the limelight and intensified the feminist movement in India. These Guidelines were extended to all kinds of employment, from paid to voluntary, across the public and private sectors. Following this decision, many states and territories of India acted upon the Guidelines, but many others did not. Several institutions still failed to set up Complaints Committee as envisaged in the Supreme Court Guidelines in clear violation of law of the land. Similarly, there were many other significant cases in India, like *RupanDeol Bajaj vs. Kanwar Pal Singh Gill (AIR 1996 SC 309)*; etc., that clearly marked the sexual harm to millions of working women across the country, everywhere and everyday irrespective of their location.

The media frequently highlighted many other sexual harassment cases of women at the workplace in India. All the wings and layers of Government- Legislature, Executive and Judiciary at Central, State and Local levels- have the responsibility towards empowerment of women. But, with the passage of time, it has been felt that guidelines and norms are not sufficient to deal with the incidents of sexual harassment of women at workplaces and a strong piece of legislation is the need of the hour. Therefore, the legislation has enacted many laws in bringing about equality between men and women to fulfil the obligation, not only of the International Conventions, but also of the Constitution of India. Ten years after the *Vishaka* judgment, a Bill was introduced, but for unexplained reason it was not made into an Act. Then the present *Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Bill, 2012* was amended and re-introduced in the Lok Sabha. On April 23, 2013, the Sexual Harassment Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013. Finally, the Indian Ministry of Women and Child Development notified December 9, 2013 as the effective date of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

III. KEY PROVISIONS UNDER THE PREVENTION OF WORKPLACE SEXUAL HARASSMENT ACT

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed on 9th December, 2013 in the pursuance of *Vishaka Guidelines* laid down by the Supreme Court in 2005. Following are the prominent features of this Act:

- 1. Purpose of the Act:** To provide protection to women against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment.
- 2. Applicability and Scope of the Act:** The Act is applicable to the entire territory of India and stipulates that a woman shall not be subjected to sexual harassment at her workplace. Further, the Act applies to both the organized and unorganized sectors in India.
- 3. Definitions (Section 2):** Some of the important definitions as given in the Act are highlighted below:

- *Aggrieved Woman* means woman of any age whether employed or not employed who is subjected to any act of sexual harassment. Therefore, victim of sexual harassment may be either employed woman or non-employed woman who is present at the workplace. This protection is available even for the woman worker who is working in domestic house or dwelling house (*Section 2(a)*).
- *Workplace* has been defined in very widest sense; it includes work place in government, private, NGO, co-operative society, trust, sports, stadium, educational institutions, hospitals, industry, complex, service provider and dwelling house. It includes the place of production, supply, sale, distribution or service (*Section 2(o)*).
- *Employee* means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent (*Section 2(f)*).
- *Employer* means any person responsible for the management, supervision and control of the workplace in any department, organization, undertaking, establishment, enterprise, institution, office or branch. He is the person responsible for discharging contractual obligations with respect to his or her employees at the workplace (*Section 2(g)*).
- *Sexual harassment* means any of the following unwelcome acts or behaviors:
 - (i) physical contact and advances;
 - (ii) a demand or request for sexual favors;
 - (iii) making sexually colored remarks;
 - (iv) showing pornography; and
 - (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature (*Section 2(n)*).

The Act under *Section 3* further provides that:

- (i) No woman shall be subjected to sexual harassment at any workplace.
- (ii) The following circumstances, among other circumstances, may also amount to sexual harassment:
 - (a) Implied or explicit promise of preferential treatment in her employment; or
 - (b) Implied or explicit threat of detrimental treatment in her employment; or
 - (c) Implied or explicit threat about her present or future employment status; or
 - (d) Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 - (e) Humiliating treatment likely to affect her health or safety.

4. Duties of Employer (Section 19): Every employer at the workplace shall:

- Provide a safe working environment which shall include safety from the persons coming into contact at the workplace.
- Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the ICC.
- Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the Act.
- Organize orientation programmes for the members of the ICC.
- Provide necessary facilities to the ICC or the LCC for dealing with the complaint and conducting an enquiry.
- Assist in securing the attendance of respondent and witness before the ICC or the LCC.
- Make such information available to the ICC or the LCC with regard to the complaint.
- Provide assistance to the woman if she chooses to file a complaint under IPC or any other law.
- Cause to initiate action under IPC or any other law against the perpetrator or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.
- Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct; and
- Monitor the timely submission of reports by the ICC.

5. Complaints Committee: The Act envisages the setting up of grievance redressal forums for both organized and unorganized sectors, namely:

- (a) *Internal Complaints Committee (ICC):* Under *Section 4* of the Act, every employer of workplace shall constitute Internal Complaints Committee (ICC) at every unit of workplace. The Internal Committee shall consist of the following members to be nominated by the employer, namely:
 - Chairperson of ICC will be senior most woman worker of the workplace;
 - Not less than two persons who are committed to the cause of woman or who have had experience in social work or have legal knowledge;
 - One member from the non-governmental organization; and
 - Woman should constitute 50 percent of overall committee members.
- (b) *Local Complaints Committee (LCC):* Under *Section 5*, any District Magistrate, Collector or Deputy Collector may be appointed as District officer for District under this Act. District officer shall constitute

Local Complaints Committee (LCC) to entertain complaints of sexual harassment where employer has not constituted ICC or complaints of sexual harassment are against the employer himself. The Local Complaints Committee shall consist of the following members nominated by the District Officer, namely:

- Chairperson of LCC is an eminent woman in the field of social work related to the cause of women;
- One member is selected from the taluk level;
- Two members from non-governmental organization, at least one member should have the knowledge of law, and at least one member should be from the schedule caste or tribe or backward community or minority; and
- Social welfare officer is ex-officio member of Committee.

6. Filing of Complaint of Sexual Harassment or Complaint Mechanism (Section 6): Any aggrieved woman has to make complaint in writing before ICC, if not constituted before LCC, within 3 months from the date of incident, and in case of a series of incidents, aggrieved women have to make complaint within a period of three months from the date of last incident. In case where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir may be prescribed to make a complaint. The Committee shall complete the enquiry within period of 90 days from the date of filing complaint.

7. Redressal Process (Section 10): Committee can conduct the conciliation at the instance of aggrieved woman. If compromise is reached, committee shall not conduct the enquiry of complaint. However if the employer fails to honor compromise, the committee may conduct the enquiry. During the enquiry if it is found that employee has committed the act of sexual harassment;

- The committee shall make complaint to the police within 7 days from its finding and recommend to the employer to take action against employee.
- Committee has the power of civil court to conduct enquiry. Committees during enquiry recommend the transfer of aggrieved woman or employee; even woman may be given 3 months leave also in addition with other leave. Employer shall implement these recommendations.

8. Confidentiality to be maintained (Section 16): The contents of the complaint, identity and address of the aggrieved woman, respondent and witness, information relating to conciliation and inquiry proceedings, recommendations of the ICC or the LCC and the action taken by the Employer of the District Officer shall not be published, communicated or made known to the public, press and media. However, information may be disseminated regarding the justice secured to the victims of sexual harassment and cannot be disclosed even under the Right to Information Act, 2005.

If any person contravenes the provisions of Section 16 of the Act, he shall be liable to penalty in accordance with the provisions of the service rules applicable to the said person as per *Section 17* of the Act.

9. Interim Reliefs (Section 13): Any amount payable to the woman is deductible from the salary of employee. If an employee has already resigned, then it is recoverable from him. The amount is recoverable as land revenue. District Collector shall initiate the recovery of land revenue within 60 days from the date of receipt of order from committee.

10. Penalties for Sexual Harassment: The committee is empowered to recommend:

- Punitive measures to employer against woman who has made false and malicious complaint. Even it can punish the person who has given false evidence or produced forged document during the enquiry (*Section 14*).
- Employer, who fails to constitute Committee or fails to implement the recommendations of committee, may be punished to the extent of Rs. 50000 fine; if he commits non-compliance second time, he may be fined to an extent double amount of the first fine but it cannot exceed the maximum amount of 50000 (*Section 26(1)*). Further, the government can take action of canceling the license, non-renewal, and withdrawal of his registration (*Section 26(2)*).

11. Rules of the Act (Section 29): The Central Government, by notification in the Official Gazette, made rules under this Act, namely the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013:

1. Writing a complaint of Sexual Harassment: In case an aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by her relative or friend; or her co-worker; or an officer of the National Commission for Women; or by any person who has knowledge of the incident, with the written consent of the aggrieved woman.

On the other hand, in case where an aggrieved is unable to make a complaint on account of her mental incapacity, a complaint may be filed by her relative or friend; or a special educator; or a qualified psychiatrist; or the guardian or authority under whose care she is receiving treatment; or any other person who has knowledge of the incident.

In case where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

2. Manner of Inquiry into Complaint:

- At the time of filing the complaint, the complainant has to submit six copies of the complaint along with supporting documents and, the names and addresses of the witnesses to the Complaints Committee.
- On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days.
- The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses within a period of ten working days from the date of receipt of the documents.
- The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
- The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex-parte* decision on the complaint, if the complainant or respondent fails to present herself or himself for three consecutive hearings convened by the Chairperson or the Presiding Officer. Such an *ex-parte* order may not be passed without giving a fifteen days' notice in writing in advance to the party concerned.
- The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
- In conducting the inquiry, a minimum of three members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be shall be present.

3. Manner of taking action: Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall be recommended to the employer or the District Officer, as the case may be, to take any action against the respondent. The action includes a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

4. Preparation of Annual Report: The Annual Report prepared by the Complaints Committee under *Section 21*, shall have the following details:

- Number of complaints of sexual harassment received in the year;
- Number of complaints disposed off during the year;
- Number of cases pending for more than ninety days;
- Number of workshops or awareness programmes against sexual harassment carried out; and
- Nature of action taken by the employer or District Officer.

Therefore, the new law brings in its ambit even domestic workers in both organized and unorganized sectors. The Act laid down a grievance redressal mechanism that mandates all companies, whether operating in the public or private sector, to set up Complaints Committee within the organization to look into such offences. Further, the Act makes it the duty of every employer to provide a safe work environment which shall include safety from all the persons with whom a woman comes into contact at the workplace; organize workshops and awareness programmes; provide assistance to the woman if she chooses to file a criminal complaint; initiate criminal action against the perpetrator and treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.

IV. CONCLUSION

Sexual harassment at the workplace has remained one of the central concerns of the women's movement in India since the early 1980s (Patel, 2002). It is very important to have a gender sensitive workplace to fulfill the needs of workers; especially women. It is obvious that *Vishaka Guidelines* provided protection only to women as victims against men as respondents at workplace situation, which itself is quite controversial. However, this has come up primarily due to the peculiarly patriarchal social structure persisting in Indian society, where women continue to be more vulnerable, although there may be cases of sexual harassment of men by women in dominant positions. The implementation of Sexual Harassment Act would ensure safe and healthy work environment for women. Thus, *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* is a land mark step for protecting rights of women and providing safe environment to women at workplace.

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