

## A CRITICAL ANALYSIS OF EFFECTIVENESS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

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### ABSTRACT

*Sexual harassment at the workplace violates women's fundamental rights to equality, dignity, and livelihood as guaranteed by Articles 19(1)(g) and 21 of the Constitution of India. The landmark Vishaka vs. State of Rajasthan judgment established guidelines to address workplace harassment, mandating preventive measures and grievance mechanisms. Subsequent developments, such as amendments to the Central Civil Services Rules, reinforced these protections. Judicial interventions like Medha Kotwal Lele vs. Union of India emphasized strict implementation of these provisions. This abstract highlights the evolution of legal safeguards in India, aiming to ensure safer workplaces and uphold women's constitutional and human rights.*

**KEY WORDS:-** Sexual Harassment, violation, POSH Act

### INTRODUCTION

Sexual harassment against women is primarily a behavioral concern rather than merely a societal dispute, having profound implications for society as a whole. Women at their workplaces are especially vulnerable to such violations, often facing harassment on a daily basis. This underscores the urgent need to eliminate workplace sexual harassment, ensuring that women can work in safe and supportive environments. The protection of women is not only essential for achieving gender equality but also critical for the holistic development of the nation.

Workplace sexual harassment is a severe offense that inflicts trauma on victims, disrupting their mental well-being. It is discriminatory, exploitative, and infringes upon a woman's fundamental rights, including her right to equality under Articles 14 and 15 of the Indian Constitution and her right to live with dignity under Article 21. India's commitment to combating this issue is reflected in its signing of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on July 9, 1993.

The landmark *Vishaka v. State of Rajasthan* case<sup>1</sup> in 1997 was pivotal in establishing guidelines to address sexual harassment in workplaces following the brutal gang rape of Bhanwari Devi, a social worker from Rajasthan. This led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). Despite its enactment, implementation remains inadequate. For example, the National Crime Records Bureau

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<sup>1</sup>AIR 1997 SC 3011

(NCRB) data from 2018 reveals a significant increase in sexual harassment cases at workplaces, many of which remain underreported.

In the present scenario, a large number of women came out of their house threshold to do work for their empowerment and for earning money. Women are no longer economically dependent on men for their needs. No doubt, women participation in the labour market has been a great achievement but simultaneously they are prone to unwanted kinds of attention being a woman in the workplace. There are still many working women and officials who have been the victim of sexual harassment at their workplace. Many working women do not know the difference between sexual harassment and healthy flirting, there is a line which must be taken care of.

When sexual harassments occur at workplaces it is not just an organisational management issue, it requires a proactive HRM intervention for protection of human rights and human dignity of working women. According to the European Commission's Council Resolution (1993) "Sexual Harassment means "unwanted conduct which is sexual or other conduct that is based on sex which affects the dignity of women at the workplace. This is inclusive of unwelcome physical, verbal or non-verbal conduct". Generally, many people consider Sexual Harassment as an issue in which a superior officer, create a hostile work environment by making sexual remarks, gesture and try to have physical contact with the employee. A study conducted by Martha Farrell Foundation, in 2018 where it found that only 29 percent, out of 655 districts in the country have responded that they have established Local Complaint Committees (LCC) , it is an mandatory requirement that it must be established as per the provisions of the said Act as it obligatory on the part of employer to constitute Internal Complaint Committee (ICC) and it is duty of District Officer and employer of an establishment to must maintain the letter and spirit of the Sexual Harassment Act, 2013<sup>2</sup>. After considering all these facts, it is not wrong to state that the provisions of the Act are implemented inadequately. There are also studies which reveal that nearly 70% of working women opt not to report cases of Sexual Harassment as<sup>3</sup> fear of victim shaming and fear of losing jobs.

#### International Laws and Policies for Addressing Sexual Harassment in the Workplace

- United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, 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)).
- The Convention on the Elimination of all Forms of Discrimination against Women (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).
- 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.

<sup>2</sup> Martha Farrell Foundation, *Prevention of Sexual Harassment at the Workplace*

<sup>3</sup>Ibid

- 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.
- 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.

### **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<sup>4</sup>. 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 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<sup>5</sup>.

### **Development of Law on Sexual Harassment in India**

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<sup>6</sup> were:

<sup>4</sup>J.N Pandey, The Constitution Law of India (Central Law Agency, Allahabad, 52<sup>nd</sup> edn., 2015).

<sup>5</sup>M.P Jain, Indian Constitutional Law of India ("Lexis Nexis" Butterworth Wadhwa Publication, Nagpur, 8<sup>th</sup> edn., 2011).

<sup>6</sup>*Vishakav. State Of Rajasthan*, AIR 1997 SC 3011

- There must be a duty of the Employer to prevent 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 necessary steps required.
- Definition of Sexual Harassment was provided by the Apex court which includes such unwelcome sexually, determined behaviour (whether directly or by implication) as: i. Physical contact and advances ; ii. demanding or requesting for sexual favours; iii. Sexually coloured remarks; iv. Showing pornography; v. Unwelcome physical verbal or non-verbal conduct of sexual nature.
- All employers whether public or private sector, should take appropriate measures to prevent Sexual Harassment at Workplace.
- Where conduct of any person amounts to a specific offence under the Indian Penal Code or under any other law, the employer must initiate an relevant action in compliance of law by making an complaint with appropriate authority.
- Where conduct of any person amounts to misconduct in employment as provided in relevant service rules, appropriate disciplinary action must be initiated by the employer in accordance with these rules.
- Appropriate grievance mechanisms should be created within the employer's organization to redress the victim's complaints, whether such conduct institute an offence under law or service rules. Such a complaint mechanism should guarantee a timely treatment of the complaint.
- The complaint mechanism, referred above should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.
- Employees should be allowed to raise issue of Sexual Harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer Employee Meetings..
- 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 reasonable and necessary to assist the affected person in terms of support and preventive action.
- The Central/State Governments should consider adoption of suitable measures including legislation to make sure that the guidelines provided by this order are also observed by the employers in Private Sector.
- The guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, it is directed by the court that these guidelines and norms must be strictly observed in all work places for the protection of working women and enforcement of the right to gender equality of the working women. These directions will be binding and enforceable in law<sup>7</sup>.

### **Post Vishaka Developments**

Pursuant to Vishaka judgement, the Central Civil Services (Conduct) Rules 1964, were amended in 1998 to incorporate r. 3C , which prohibits sexual harassment of working woman. The apex court in its judgement in Medha Kotwal Lele & Ors.

<sup>7</sup>*Vishaka v. State of Rajasthan* , AIR 1997 SC 3011

V. Union of India & others 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.

### **Grievance Redressal Mechanisms**

I.T sectors are considered as respectable and responsible workplace. Considering the importance of this sector as one of the major channels for empowering woman in India, where large number of females are currently employed, a proper and effective sexual harassment complaint mechanism need to be established and operated efficiently. The Sexual Harassment Act requires an employer to set up an “Internal Complaints Committee” (ICC) at each office/branch of establishment, which employs not less than 10 employees, to hear and redress grievances pertaining to sexual harassment. The complaint need to be filed by the aggrieved party, in writing (six copies) with supporting documents, to ICC within 3 months from the date of incident and in case of series of incidents, within a period of 3 months from the date of the last incident. In case of physical incapacity, mental incapacity or death of the aggrieved person, law makes provision for friends, relatives, co workers, psychologist, psychiatrists etc. to file a complaint in this regard. Upon receipt of the complaint, 1 copy of the complaint need to be sent to the respondent within 7 days and the latter should file a reply to the complaint along with his list of supporting documents and the name and addresses of the witnesses within 10 working days. Law mandates that the inquiry has to be completed within a total of 90 days from the date of receipt of the complaint. The Inquiry report has to be issued within 10 days from the date of completion of inquiry. The employer is required to act on the recommendations of the committee within 60 days of the receipt of the Inquiry report. Appeal against the decision of the committee is allowed within 90 days of the date of recommendations. There are a set of punishments that may be imposed by the organisation, based on the Sexual Harassment Act, on an employee for indulging in an act of sexual harassment<sup>8</sup>.

Based on the nature and gravity of the incident, the reprisal may vary as prescribed under the service rules of the organisation. Action may be taken in any of the following forms such as Issuance of Warning, demand for a written apology, impose bond of good behaviour, Include adverse remarks in the Confidential Report, debarring from supervisory duties, denial of membership of statutory bodies, denial or re-employment, stopping of increments/promotion, reverting or demotion or Suspension or dismissal and any other punishment as may be warranted by the case. In the absence of service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, pay rise or increment, terminating the respondent from service, undergoing counselling session or compulsory community service<sup>9</sup>.

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<sup>8</sup>The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013

<sup>9</sup> Deepa Rafeeqe, “Prevention of Sexual Harassment of Women at Workplace”.

The compensation payable to aggrieved woman, shall be determined based on the mental trauma, pain, suffering and emotional distress caused to the aggrieved person, loss of career opportunity due to the incident of sexual harassment, medical expenses incurred by victim for physical or psychiatric treatment, income and status of the alleged perpetrator and feasibility of payment. Section 354 A of Indian Penal Code, 1860 r/w Criminal Law (Amendment) Act, 2013, makes sexual harassment punishable with imprisonment, the term of which may range between 1 - 3 years or with fine or both<sup>10</sup>. Since the amendments criminalizes all acts of sexual harassment, employers shall be required to report any offences of sexual harassment to the appropriate authorities. This being the general rule, considering the environment and responsibility bestowed to an organisation, the punishment for the harasser and the compensation for the victim in genuine cases shall be detrimental.

### **Effective Implementation of Grievance Redressal Mechanism**

The first and foremost step to prevent and address sexual harassment is to frame policies and takeadopt measures to protect women from the Sexual Harassment. There should be a sexual harassment policy, a general harassment policy and a policy on how sexual harassment cases investigations are to be conducted in the organisation, in case of a complaint. In compliance with the legal requirements every organisation should have an ICC panel for dealing with issue of sexual harassment. Prior to that, there should be a policy framing committee, a well defined complaint intake process, an efficient management system of intake communication , a body for conciliation and complaint investigation, legal aid cell and a psychological assistance centre headed by professionals with expertise in the respective areas<sup>11</sup>. Training programs need to be imparted for campus employees who intake sexual harassment complaints, who educate others in the campus about sexual harassment policy, the constitution and operations of intake committee and the remedial measures available to the aggrieved person<sup>12</sup>.

#### **Recommendations for Effective Formulation and Implementation of a Sexual Harassment Prevention and Redressal Mechanism**

- Establish a comprehensive zero-tolerance policy on sexual harassment, clearly outlining its prohibition, prevention, and redressal measures through internal policies, declarations, and posters.
- Provide a precise definition of 'sexual harassment' to prevent ambiguity and ensure clarity regarding inappropriate behavior.
- Prominently display the legal and disciplinary consequences of engaging in sexual harassment at the workplace.
- Regularly discuss sexual harassment prevention in worker and employer-employee meetings. Address such behavior as misconduct and initiate service rules and disciplinary actions as necessary.
- Facilitate legal action under the Indian Penal Code, 1980, or other relevant laws, and assist the aggrieved party in pursuing legal recourse if desired.
- Maintain confidentiality during investigations to the greatest extent possible, without guaranteeing absolute

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<sup>10</sup> S.N Mishra , *Indian Penal Code* ( Central Law Publications)

<sup>11</sup> Jaswant Deora, " Sexual Harassment at Workplace" 2 *Indian Journal of Applied Research* 486-489(2016)

<sup>12</sup> *ibid.*

secrecy to any party.

- Adapt organizational POSH policies to address remote and virtual working scenarios by incorporating provisions for virtual harassment and cyberbullying.
- Provide virtual POSH training to employees working from home.
- Ensure prompt action upon receiving complaints to avoid delays. Gather and evaluate evidence comprehensively while maintaining transparent communication with all involved parties.
- Adhere strictly to organizational policies and legal guidelines to eliminate ambiguity, misinterpretation, or misuse of power by the redressal committee.

## **Conclusion**

Sexual harassment is a global issue requiring collective action. India's POSH Act, 2013, aims to safeguard women at workplaces by mandating robust preventive and redressal measures. Every organization must foster a culture where women are protected from harassment, ensuring a safe and empowering work environment. Equally, women must remain vigilant to ensure compliance with the law, fostering accountability and a commitment to gender equity.

