



Sexual Harassment At Workplace In India: Laws And Its Effectiveness

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Abstract: Women are prone to many problems like; exploitation, rape, violence. Sexual harassment at workplace is one of them. It is a heinous crime and become a widespread problem for the world. Countries all over the world are trying to combat this problem and India is not an exception. It isn't that crimes like sexual harassment wasn't discussed in India earlier but it came into highlight when supreme court issued Vishakha guidelines in 1997 in a response to a petition filed by an NGO group named- "Vishaka". Before this guidelines, crimes like sexual harassment remain unnoticed and people were thought this as common or everyday incident. This paper talks about sexual harassment laws at workplace and their effectiveness with taking consideration to Vishakha guidelines and POSH act of 2013. This paper also highlights the recent data of sexual harassment of women at workplace released by sources like National Commission of women (NCW) and National Crime Record Bureau (NCRB). Provisions for sexual harassment before Vishakha guidelines and POSH act were also listed in this paper and it also show effectiveness of these provisions.

Keywords - Sexual harassment, Vishakha guidelines, POSH act, workplace, women, supreme court

I. Introduction

Those days were gone when men were considered sole bread winner for the family. Now it's women too who are earning and going for work and running their families. In today's world, women can be seen in the places where only men were thought to be dominant. Now, women can be seen at the workplace from lower level institutions to higher level institutions. But this is only one side of the coin. The reality is that as the number of women at workplace are increasing so the crimes related to women at workplace are also increasing rapidly. Sexual harassment is one of them. This was first ever defined in the landmark judgement of Vishakha vs. Union of India in 1997. It is a form of violence that impedes women's fundamental rights like article 14, 15, 21 of the Indian constitution.

In case like sexual harassment the victims are treated worse by society than the person who actually committed the crime. In some cases women don't even register because of family's honour, societal fear, fear of losing a job and losing one's livelihood. They just bear the crime silently. But after cases like Vishakha, the scenario has changed and women are now more aware about their rights at the workplace and they started raising their voices against crimes like sexual harassment. POSH act, that is, sexual harassment of women at the workplace (Prevention, Prohibition, Redressal) act also came into force in 2013 that made provisions for sexual harassment of women at workplace.

II. Background

In 1997, the Supreme Court laid down guidelines in the Vishakha's case. These guidelines were in response to a petition filed by an NGO on behalf of Bhanwari Devi. She was a Dalit woman social worker in Rajasthan employed with the rural development programme. She was working to prevent child marriages in that area. She stopped marriage of one year old daughter. Because of her work she got threats of harassment and was brutally gang-raped by men of the community she tried to stop child marriage. She filed a complaint against who committed rape but the convicts were not prosecuted. Then a petition filed by an NGO and later this known as Vishakha judgement. In this judgement the supreme court highlighted the importance of the right to work with dignity at the workplace. The court, for the first time, relied on an international human rights law instrument, the convention on the elimination of all forms of discrimination against women (CEDAW), to establish guidelines known as the Vishakha guidelines.¹

III. Vishaka Judgement

The supreme court in in this judgement defined sexual harassment as:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (Whether directly or by implication) as :

- a) Physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non - verbal conduct of sexual nature.

Supreme court also suggested preventive steps for sexual harassment. Preventive Steps in Vishakha guidelines: All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.²

IV. Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) POSH Act, 2013

The Sexual Harassment Act (Hereby called as an 'Act') was finally enacted in the year 2013 for the prevention of sexual harassment against women at workplace in the whole of India. The main objective of the act was protection of Women, prevention and redressal of sexual harassment complaints. 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. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013.³ This act superseded the Vishakha guidelines of 1997. The act has considered a total of 8 chapters with 30 sections. Some important sections are:

¹Ungender,2024, Everything You Need To Know About Vishaka Guidelines
<https://www.ungender.in/here-is-everything-you-need-to-know-about-visha>

²Vishakha and others V. State of Rajasthan and others, (AIR 1997 SUPREME COURT 3011),8-9

³ Abrina Yaqoob,2019, Harrasment of Women at Workplace,P-188

Sub-section (o) of Section 2 of the Act calls all those places a workplace which is frequented by the employee during the course of employment including the transportation provided by the employer. This subsection takes within its ambit both the organised and the unorganised sector. Section 3 of the Act says that no women shall be subjected to sexual harassment at any workplace. The Act under sub-section (2) of section 3 lists certain circumstances where any act of sexual nature during the course of her employment may amount to sexual harassment like any promise of preferential treatment, any threat of malign treatment, any kind of threat in context to her present or future employment status or act which creates an impediment in her work or creates an insecure work environment for her. Section 4 of the Act talks about the constitution of an Internal Complaints Committee (ICC), where it is the duty of the employer a workplace to setup a committee by an order in writing. The Committee shall consist of a Chairperson who will be senior level working women, minimum 2 members amongst the employees having background in legal field and member from NGO. Section 6 imposes a duty on the District Officer to setup a Local Complaints Committee (LCC) in their concerned district and their jurisdiction is limited to the area where it is constituted, which shall receive complaints of sexual harassment from organisations where there is no ICC. The Officer shall appoint one nodal officer in every tehsil (in rural area) and ward (in urban area) which shall forward the complaints of sexual harassment in 7 days to the Local Complaints Committee concerned.⁴

V. Sexual harassment laws in Bharatiya Nyaya Sanhita

Bharatiya Nyaya Sanhita formerly known as Indian Penal Code also listed some provisions regarding this. Before the Vishaka guidelines came into picture, the women had to take matter of Sexual Harassment at Workplace. through lodging a complaint under Sec 354 and 509 of IPC.⁵

Section 354 – A person is said to have committed an offence under Section 354 of IPC if he assaults or uses any sort of criminal force with the intention of outraging the modesty of a woman. It is a cognizable or non – bailable offence and the punishment provided under this section is imprisonment for 1 year which may range upto 5 years, and with fine.

Section 354A – It provides for a demand or request for favours of sexual nature, showing obscene content against the will of a woman or any unwelcome physical contact. The section provides for imprisonment for a term which may extend to 3 years or fine or both.

Section 503 – If a person threatens another to do an act which he is not legally obliged to do or omits to do which he is legally obliged to do is said to have committed criminal intimidation. It is a non-cognizable offence and the punishment imposed is 2 years of imprisonment, or fine, or both.

Section 509 – A person is said to have commit an offence under Section 509 of IPC if he with intent to insult the modesty of a woman makes any gesture, utters any word or acts and that gesture, word or act intrudes with her privacy. The punishment under this offence is imprisonment for a term which may extend to 3 years and also with fine.⁶

VI. Effectiveness of these laws and Current Scenario of cases against women

The data of NCW and NCRB shows the Crimes Against Women at workplace after these laws were implemented. The effectiveness of laws can be seen by data registered by NCW and NCRB against crimes related to women specifically sexual harassment of women at workplace.

VII. NCW Data On Crimes Against Women

National commission for Women registered 28,811 complaints of crime against women in 2023 from which 55% were from U.P. Higher number of complaints were received in right to dignity category that involves 8540 cases of sexual harassment according to NCW Data followed by 6274 of domestic violence⁷.

⁴ KUSHAGRA SHARMA(2020) Sexual harassment at workplace in India and need for speedy redressal of complaints,1301

⁵Abrina Yaqoob,2019, Harrasment of Women at Workplace,P-188

⁶KUSHAGRA SHARMA(2020) Sexual harassment at workplace in India and need for speedy redressal of complaints ,1305-1306

⁷ The Hindu,2024, 28811 complaints of crimes against women recieved in 2023,over 50% from U.P:NCW Data

<https://www.thehindu.com/news/national/28811-complaints-of-crimes-against-women-received-in-2023-over-50-from-up-ncw-data/article67695834.ece>

In 2024 also NCW received 12600 complaints Higher in Uttar Pradesh. And this time also the highest complaints were received in the category of Right to dignity that involves sexual harassment that is 3107 according to NCW Data.⁸ The three states where crimes rates against women are high are Uttar Pradesh, Delhi and Maharashtra respectively. This data can be seen easily in the given table:

Year	Total Cases	Sexual Harrasment Cases
2023	28,811	8540
2024	12,600	3107

Table-1

VIII. NCRB Data On Crimes Against Women

The latest data from the National Crime Records Bureau (NCRB) reveals that the rate of crimes against women in India (calculated as crimes per 100,000 of the women population) increased by 12.9% between 2018 and 2022. In India, the reported crimes against women per 100,000 women population is 66.4 in 2022, in comparison with 58.8 in 2018. This increase could be due to a number of factors, including an increase in actual crimes, an improvement in reporting mechanisms, and a growing willingness of women to speak out about their experiences of violence.⁹

IX. Conclusion

The time has come when society needs to give humans- like treatment to women too. Women of all across the world have the right to live their life with dignity and safety at home and workplace both. They should provide a safe environment at the workplace and contribute to the country to the fullest. It is the responsibility of every person working in both organised and unorganized sectors that women feel safe at their workplace. Although the Constitution of India laid down provisions for sexual harassment of women at workplace still there is need to be proper implementation of these provisions at ground level. Because these laws are made but still many women remain unaware of that and becomes victim of the crime like sexual harassment. Women also have right to enjoy their fundamental rights but crimes like sexual harassment of women prevent them to enjoy those rights. Women still fear coming out of their homes and doing work and earn. Women too need to come forward and raise their voices against crimes and make a safer environment at the workplace for themselves.

⁸ Business Standard,2024, NCW recieves 12600 complaints so far in 2024, highest from U.P, Delhi
https://www.business-standard.com/amp/india-news/ncw-receives-12600-complaints-so-far-in-2024-highest-from-up-delhi-124061800541_1.html#amp_tf=From%20%251%24s&aoh=17408899396833&referrer=https%3A%2F%2Fwww.google.com

⁹ Bushra Ansari and Sowmya Rajaram,2024, It's women's day,but on the ground little has changed
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