

**SEXUAL HARASSMENT AND ABUSE OF WOMEN AT
WORKPLACE- A SOCIO LEGAL ANALYSIS.**

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ABSTRACT

Sexual Harassment of women in workplace is epidemic and not pandemic in today's world. As for us in present century concerned, sexual harassment in workplace is common in every place whether public or private sector. Women were never treated similarly to men in many ways for generations to come. They were denied the right to possess their own property, a portion of their parents' property, even the ability to vote, the freedom to select their employment, and other privileges. In order to fight for women's rights and guarantee that they have all the rights that men enjoy now that we have emerged from those dark times of oppression, there has to be a strong movement for the empowerment of women. Numerous obstacles to women's equality and empowerment are established in cultural traditions. After numerous struggle by the NGO's in Bhanwari Devi rape cases which initiated the strong struggle for the prevention of sexual harassment in workplace. As, a result, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was just signed into law by the President after being passed by both the Lok Sabha and the Rajya Sabha. The purpose of this Act is to safeguard women against harassment at work and to provide a secure atmosphere. The Supreme Court decision from 12 years ago, India finally has a definition of what sexual harassment in the

workplace is after 50 years. The Visakha concept of sexual harassment is used in the law. The amount of compensation that must be given to a woman who has experienced sexual harassment is outlined in Section 15 of the Act.

Keywords: Sexual Harassment, workplace, Property, Compensation, Empowerment, Privileges.

INTRODUCTION:

“Any Country which fails to protect and save the dignity and harness of women in workplace is hampering their own development”

Sexual harassment at work place is a form of systematized violence against women. Most of the working women at some time or the other face this kind of violence from their colleagues, bosses or employers. Sexual harassment in the workplace is an extension of everyday violence and is discriminatory and exploitative because it affects women's right to life and livelihood. It is a violation of a woman's fundamental rights to equality under Articles 14 and 15, as well as her right to live in dignity under Article 21 of India's Constitution. On July 9, 1993, India signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). After the brutal gang rape of Bhanwari Devi, a social worker from Rajasthan, a petition was filed in India's Supreme Court for the first time in 1997 to enforce fundamental rights of working women.

In addition to the guidelines given in the case of **Vishaka & Ors. Vs. State of Rajasthan¹**, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (hereinafter referred to as the POSH Act) was enacted. The article critically examines the various Laws governing the prevention of sexual harassment in the workplace and its implementation

SIGNIFICANCE OF THIS STUDY:

Today, the world is talking of human rights, but we have forgotten an entity -the woman. The irony lies in the fact that it is the woman. Merely recognizing the rights of women is not sufficient, and no lip service is enough. What is needed is to promote the interest of women by providing them a congenial environment and opportunity for self-determination in all matters and above all opportunity assert their rights as a human- as a woman.

Several laws have been enacted to improve women's social status, economic independence, political participation and professional growth. The Constitution of India, International

Covenants including the Universal Declaration of Human Rights provides most of the rights for empowerment of women. The Indian Penal Code made suitable provisions to deal with various offences relating to women. Criminal Law also provides various provisions to protect women against cruelty. The proposed Women Reservation Bill², which is on the parliament table, is an

¹((1997) 6 SCC 241)

²One Hundred Eight Amendment Bill, 2018

Important step in their direction. The Government has launched various welfare schemes to raise the status of women. Despite all these, atrocities on women are on rise.

At present victims of sexual harassment do not lodge complaints, as they fear that such complaints deprive them of their promotions or may create hostile work environment. Civil and penal laws in India do not adequately provide for specific protection. The guidelines given by Supreme Court in **Visaka v. State of Rajasthan**³ are not strictly followed by the organizations. There are no effective legal measures to combat sexual harassment.

Current Sexual Harassment law in India. All stakeholders' support and commitment are required for the law to function effectively and successfully. Though sexual harassment at work place is an age old problem, women have been left to deal with it on their own or sometimes with the support of women's organizations. Increasing participation of women in all fields of work. Changes in social attitudes towards women have not shown much progress. There have been no effective legal measures to counter it. The problem received judicial recognition when on August 13, 1997 in Visaka a three judge bench of the Supreme Court headed by the Chief Justice delivered a significant judgment on sexual harassment at work place, ratifying guidelines drawn up by women's groups.

The roots of serious offence relating to sexual harassment originate from the concept of 'Gender bias. Though violence against women may take many forms ranging from mental torture to dowry deaths, eve teasing, assault and rape are few to be listed. It is the social structure and legal framework of the society which make women the target of such heinous crimes. Today, our major issues are human rights and justice for all. But can we achieve these goals without ascertaining rights to women and protecting them from various abuses? The absence of equal opportunities to women in any walk of social life is a denial of equal status and equal participation in the affairs of the society and equal membership.

The existing literature on the problem is reviewed here in order to find out the availability of the studies on the problem. Margaret. A. Croach in his book titled, "thinking about sexual

harassment A Guide for the perplexed", discussed clearly the historical evidence of sexually harassing behaviour and the conception of sexual harassment in the context of employment. It shows how competing conceptions of sexual harassment are evident in the judicial decisions and

³ ((1997) 6 SCC 241)

Equal Employment Opportunity Commission Regulations developed from the 1970s through the 1990s, the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex by ILO Convention No 100-Equal remuneration convention 1951.

Laura.L.O.Toole looked into the scope and consequences of sexual harassment in his book titled "Gender Violence". Research based information to understand how organizations become sexualized is provided in this book.

"Sexual harassment in the work place" written by Margaret.S.Stockdale stresses the need of the importance of integrative research on sexual harassment. It also covers types of sexual harassment and theoretical explanations to give clarity to a heated issue that is shrouded in controversy and ambiguity.

Gutek.B.A. in his book titled "sex and the work place", (1985) discussed the multiple consequences of sexual harassment in the work place and how it affects the well-being of employees and the productivity of organizations

"Violence against Women", edited by Pauline B Bart and Eileen Geil Moran, highlights pervasiveness or parameters of the work place, sexual assault and formulates the means by which women can curtail or eliminate such behavior in their places of employment or education. Rehana Sikri in his book titled "Women and Sexual Exploitation: Harassment at work" explains attitudes to sexual interaction and sociology and work place. It has been argued that the sex ratio at work often leads to sex role spill over, which in turn often results in sexual harassment.

"Crime against Working Women" written by Dr. Prabhat Chandra Tripathy highlights the crimes of Eve-Teasing and Molestation. Judicial trend in obscenity, and outraging the modesty of women. Emphasis is made on the point that crimes against working class women are showing an increasing trend and need to spot out criminal tendencies and to curb their growth by preventive steps. It also covers

Dr. Swarn Lata Sharma in her book titled "Gender Discrimination and Human Rights" examines the factors responsible for gender bias and gender-based violence which are both the cause and consequence of gender-based discrimination. It stresses the necessity of equal enjoyment of all human rights, as equality forms the core of human rights.

Law Relating to sexual harassment at the workplace edited by Indira Jaising throws light on the various areas of the law that can be used sexual harassment of women at work place to a certain

extent. A Report on sexual harassment in Delhi University by Gender Study Group (1996) illustrated the fact that all most all women face sexual harassment on campuses. The survey report also revealed that the act of sexual harassment has psychological, emotional and educational negative consequences on women and stressed the need of University authorities to take action.

A Saheli Report (1998) on "Sexual Harassment and the Working Women; another Occupational Hazard", reveals that the guidelines of Supreme Court are inadequate and not much useful to unorganized sector. J.N.Pandey in his book "Constitutional Law of India" mentioned the topics Right to Equality, Right to life, and Right against exploitation and Constitutional Remedies.

Law relating to protection of Human Rights written by Dr. S.K.Awasthi and R.P.Kataria deals with the Human Rights of Women to uphold her dignity and honour and various international instruments in favour of women to protect against any kind of discrimination and harassment. Newspapers, Journals, periodicals and Websites reviewed indicated that the problem of sexual harassment is on the increase and Supreme Court guidelines, framed in the absence of specific legislative law, are not fully effective to all classes of working women.

Before 1997, however, women who experienced sexual harassment at work had to file a complaint under Section 354 of the Indian Penal Code, which deals with criminally assaulting women in an effort to insult their modesty, and Section 509, which punishes anyone who uses language, gestures, or actions that are meant to belittle a woman's modesty. These provisions gave the police officer a choice over how to interpret "outraging a woman's modesty." When Vishaka⁴ norms were introduced in 1997, the entire situation altered.

With these issues unfolding in the review of literature, the present study seeks to examine the under mentioned objectives.

A Deep Analysis of the Legislation dealing with the sexual harassment in the workplace:

As for us 21st Century Concerned, women's active participation in every sphere of the work

and various fields of the society has been drastically increased after independence. Previously the works are specifically reserved for men have now been changed; now women are more educated and independent to choose their own field of expertise.

The development of women leads to the development of the present society. But along with the increasing development, there is also increasing horrifying incidents of sexual harassment and rapes in the workplace. Many incidents have been reported till date and there are scenarios some situations are not exposed to the society due to their customary practices, shyness and the family situation

Women were treated like things and endured a lot of physical and psychological abuse at work. This went against the basic rights guaranteed to women by the Indian Constitution. The Indian Constitution's Article 14 on the right to equality was actively being violated. Articles 15 and 16 of Constitution of India, which forbade discrimination based on caste, religion, sex, and opportunity equality, respectively, were violated in this way.

The Bhanwari Devi case, which helped establish the Vishaka standards, is one of the most important instances involving women's protection. The case's developments are explained as follows. Bhanwari Devi was a Dalit government official who ran campaigns against dowry and child marriage as well as promoting hygiene and education. She was working for a company and was assisting a young lady whose parents had made her marry at an early age. But due to the involvement of strong political figures and prominent individuals, she was unable to prevent the child marriage. She made an effort to protest and organized a demonstration, but she was unable to avert the marriage. When Bhanwari Devi and her husband were strolling along the road, several individuals attacked them in retaliation for the protests and campaigns launched against them. These males raped her in a group.

Bhanwari Devi accused those people of rape in a court of law. The police and other law enforcement officials did not, however, take her seriously. The police officers needed 52 hours to lodge the complaint. Additionally, the Rajasthan High Court cleared all of these individuals of charges of rape on a number of reasons, including the fact that a woman cannot be gang-raped in front of her husband and that the village chief is not permitted to engage in such practices.

The five men were found guilty of assault by the Rajasthan High Court, which carries significantly less sentence than rape. This prompted five NGOs working under the name "Vishakha" to file a PIL with the Supreme Court asking for specific instructions on how to avoid workplace sexual harassment by employing judicial activism. The Vishakha Guidelines performed

a valuable purpose in that they instantly filled the gap left by the absence of laws addressing sexual harassment of women at work. They were the sole set of regulations that were targeted to this problem and were applicable throughout India until 2013.

They were de facto applicable in the lesser courts as well because they were adopted by the Supreme Court, which served as a court of record. But in order to frame it, a three-judge panel made up of J.S. Verma (at the time CJI), Sujata Manohar, and B.N. Kripal took note of all the current international treaties. The value of foreign treaties that the government has signed or ratified but have not yet been put into law is not clearly stated in the Indian Constitution. By affirming that "any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions [The fundamental Rights] to promote the constitutional guarantee," the court in Vishakha moved towards a more purposeful understanding of fundamental rights in line with most of its recent interpretations.

The court ruled that it was permissible to read articles 14, 19, and 21 of the constitution in light of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which India joined in 1980, because there was no law pertaining to sexual harassment at work. The court cited a number of sources, including the Beijing Statement of Principles of the Independence of the Judiciary, to support its arguments. A ruling by the High Court of Australia and earlier rulings by that court. Vishakha was perhaps the first occasion in India where municipal and district level courts were directly subject to the International Covenants. Due to legislative laziness in matters of public importance, the Supreme Court has begun to heavily rely on international multilateral treaties since Vishakha, particularly those comprising the 1948 Universal Declaration of Human Rights and others comprising the International Bill of Rights. Using Art. 141 to cover legislative gaps is a common practice.

Guidelines given under Vishakha Case

After the case of Vishakha, Supreme Court of India formulated various guidelines based on Convention on elimination of all form of discrimination against women for protecting and harnessing the women and for the prevention of the Sexual Harassment in Workplace whether in government organisation or the private sector and would be binding and enforceable in law until and unless relevant laws relating to the prevention of atrocities against women in workplace have been made.

The following significant guidelines are:

- It is the responsibility of the employer and/or other responsible individuals in a workplace to avoid or discourage sexual harassment and to establish procedures for dealing with, settling, or prosecuting such situations..
- In India, "sexual harassment was defined authoritatively" for the first time. According to the Supreme Court, this includes unwelcome behaviour (whether expressed explicitly or impliedly) such as: physical contact and advances, a demand or request for sexual favors, sexually charged remarks, the display of pornography, and any other sexually-related behaviour that is physical, verbal, or non-verbal.
- All employers or persons in charge of workplaces must strive to prevent sexual harassment and if any act amount to a specific offence under the Indian Penal Code 1860 or any other law, they must take appropriate action to punish the guilty.
- Even if the act is not considered a legal offence or a breach of service rules, the employer should create appropriate mechanisms so that the complaint is addressed and redressed in a time bound manner.
- The employer should set up suitable channels to ensure that the complaint is addressed and resolved in a timely way, even if the act is not regarded as a criminal crime or a violation of service regulations.
- If required, this complaint procedure must offer a complaints committee, specific counselor, or some other form of assistance, such guaranteed secrecy. At least half of the members of the complaints committee should be female. The chairperson should be a woman.
- A third party (such an NGO) knowledgeable about the difficulties associated with sexual harassment must be included by the complaints committee in order to prevent any improper influence from top levels. The employer must sensitize female employees to

their rights and prominently notify the court's guidelines.

- Regardless of who is at fault for the sexual harassment, the employer is still required to help the victim in every way possible.
- The Central and State Governments should take the necessary steps to guarantee that personnel in the private sector follow these directives.

Various Legislation dealing with Sexual Harassment of women in workplace.

India

1. The Immoral Traffic (Prevention) Act, 1956.
2. The Indecent Representation of Women (Prohibition Act), 1986.
3. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION AND REDRESSAL ACT, 2013.
4. Various other Guidelines under Indian Penal Code, 1872.

Australia

1. Sex Determination Act 1984
2. Sex and Age Discrimination Amendment Act, 2011.

The Great Britain

1. Sex Discrimination Act and the Employment rights Act, 2005
2. The Employment Equality (Sex Discriminations) Regulations, 2005

Brazil

1. criminal law (Law No 10.224)

CONCLUSIONS AND SUGGESTIONS

“To call woman the weaker sex is a libel; it is man’s injustice to woman. If by strength is meant brute strength, then, indeed, woman is less brute than man. If by strength is meant moral power, then woman is immeasurably man’s superior: Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her man could not be. If non-violence is the law of our being, the future is with woman. Whocan make a more effective appeal to the heart than woman¹⁵?”

.....Mahatma Gandhi

One can prevent this issue at different levels, government, organizational and individual level by trying to prevent this issue by confronting and not blaming anyone. At the Organizational level the employer can provide a safe and harassment free environment through provisions and regulations framed within the organization. The sense of security which can be derived from this organization policy can facilitate work effectively and efficiently for a productive outcome. The entity can give training programme, workshops, educational programme related to sexual harassment to avoid situations. The organization must show commitment to this matter. Every matter must be taken seriously and investigated without any delay.

This will send a message to all employees that the employer is interested in protecting the interests of women employees and also trying to bring a good working environment. Surveillance methods are a preventive measure, where CCTV is installed in the workplace. Employers must conduct monthly meetings with employees to know their problems. Accordingly they can provide a safe working environment. From the angle of Government, a tremendous job has been enacting a law to eliminate this social problem of Sexual Harassment. The significant consideration part is the implementation process. There is a need to bring empowerment of women through educational programmes and knowledge which will help them to recognize and realize their basic rights. Government sees that there is gender equality.

The media can play an important role in curbing this curse from the society through films, news, advertisements, dramas these are approachable to the public and through other sources like debates, talk shows, and the media can change the mindset of the people.

⁵ Sexual Harassment At The Workplace - Academike (lawctopus.com)

If the women group or workers come to know about any such harassment, they must bring it to the notice of the complaint committee. It is the duty of the committee to keep everything confidential. Every female worker should know that it is the employer's legal duty to provide women employees with a safe working environment. All the male employees must understand these kinds of incidents affect the health, confidence and ability of a woman and will also lead her to leaving the job. Above all these there should be social acceptability. Women should not fear to come forward with their problems and complaints. They must be feeling courageous to speak out for themselves. There must be greater involvement of the public in awareness programmes and they must play a greater participatory role in governance.

Law Reform Required is One of the limitations of this act is that it excludes men from the scope. This is not a fair treatment. The act must be amended to include men also so that they can also approach the Internal Complaint Committee District Committee for their grievances or complaints which can definitely show and prove equal treatment of men and women in the workplace.

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