

## LEGISLATIVE COMMENTARY ON THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

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### ABSTRACT

Women is the key foundation of this nation. 'Just as a bird cannot fly with one wing only, a nation cannot march forward if the women are left behind stated by Swami Vivekananda. From the pre-historic era, women's are always considered as weaker section of the society. Moreover crimes like rape, eve-teasing, feminine infanticide, dowry, domestic violence, child marriage and acid attack are increasing frequently. India is now facing the matter of accelerating range of cases of sexual harassment at the workplace despite the actual fact that there are various laws to club the menace.<sup>103</sup> Male & female are indeed different biologically but nature don't create any difference. Workplace Sexual harassment is a form of gender discrimination irrefutably hampers women's constitutional and fundamental rights to equality, justice, dignity and right to life guaranteed under Articles 14, 15 and 21 of the Constitution of India. Heinous crimes are being perpetrated over them every minute. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their liability to deliver in today's competing world<sup>104</sup>. The work of various organisation, social activist, human right mechanisms and States has been crucial in guaranteeing that the human rights framework has developed and adjusted to summarize the gender specific dimensions of human rights violations to safeguard women in

better approach. CEDAW (The convention on the elimination of all forms of discrimination against women) defines sexual harassment as An act which incorporate such displeasing sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. The Sexual Harassment at Workplace Act, 2013 is a recommendation of the Justice Verma Committee. The Act aims at providing protection to women at workplace which includes any organization, institution, hospitals or any private sector organization or any place visited by employee during the course of employment<sup>105</sup>.

**Keywords** : Sexual Harassment, Workplace, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Women, POSH Act, Workforce, Human right mechanisms. Fundamental rights, women's right.

### (I) INTRODUCTION

India civilization is always in the male dominance from ancient times. The position and status of women has been a very dynamic concept since ages. Women used to consider themselves as alien or undesirable within the men world. Gender-based violence or Violence against women is a global pandemic issue that affect 1 in 3 women in their life time. Beginning from the Vedic period till today's time, the status of women has gone through enumerable changes. Women across the world have going

<sup>103</sup>

[https://www.researchgate.net/publication/335567997\\_Sexual\\_Harassment\\_of\\_women](https://www.researchgate.net/publication/335567997_Sexual_Harassment_of_women)

<sup>104</sup> <https://www.nishithdesai.com/>

<sup>105</sup> Supra 1

through different phases of life & tasted all flavours of life; from the glory and respect which she was ascribed in the Vedic period, to the denial and subordination in the post Vedic period and finally to the struggle for equality, justice, dignity recognition and survival in the contemporary world. But one thing that has been common throughout these phases is the discrimination and attack on women's dignity and status. In ancient times, women are considered as weaker section of society which has tremendously affected and in the nutshell discrimination and heinous crimes are being perpetrated over them every minutes of life. Women are physically weak by nature which has resulted discrimination and crime against them, in their parental house, matrimonial house, at school, office in every sphere of the society. The female always considered as an object for enjoyment and for sexual pleasures, some men has never been treated women as a human being and never give equal status<sup>106</sup>. According to Manu Smriti, in childhood the parents, in youth the husband, in old age the sons are the guardian of woman and the woman should never be free. It is not only the Hindu religion which did gender discrimination, violence towards women. The plight of woman is so weak in every other religions of this country the position of women is always the same. In Islam, the status of women is much worse, woman is commanded to observe strict pardah system. Her beauty and elegance are only to be exposed to her husband.

The society has accepted those women who have good character, has no ambitious in their life, those who are timid and not questioning a man in every aspects of life. She can do any sacrifice for their family and for herself. Simultaneously, Women were created from the rib of man to be beside him, not from his head to top him, nor from his feet to be trampled by him, a woman is a creator of man. But men think women is just for household chores. The main reason for attributing much

importance to her is that she brought up a man at the cost of her self-control. Due to this, the female counterpart is called first and the male counterpart as second like in 'Radha Krishan', 'Sita Ram' etc. But the status of woman in the Treta Yuga was not applied in real world (Kalyug) it is just accepted in old religious era. Physically women are treated with contempt<sup>107</sup>.

Sexual Harassment is a type of harassment involving the use of explicit or implicit sexual overtones, including the unwelcome and inappropriate promises of rewards in exchange for sexual flavours and personal attack on woman's mind and body, instilling fear and violating a woman's right to live with bodily integrity and freedom of movement. The U.N Declaration on Elimination of Violence against Women in 1993 describes Sexual Harassment as a glaring instance of violence against woman which not only violates the rights of woman to life, liberty and equality but also completely negates women's right to have equal opportunities in terms of employment. Generally speaking, sexual harassment is behaviour with a sexual connotation that is abusive, injurious and unwelcome.

## **(ii) BACKGROUND IN INDIA**

Sexual harassment at workplace is widespread all over the globe. Women all around the world have faced instances of sexual harassment, and demanding strict laws to curb these acts. In India, the framework for the Sexual Harassment at Workplace law was laid down in the landmark judgement of the Supreme Court in Vishakha v State of Rajasthan<sup>108</sup>. This case highlighted the extents 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.

<sup>107</sup> Justice V.R. Krishna Iyer, Crime against Women, "A Sage of Victimology sans penology."

<sup>108</sup> A.I.R 1997 SCC 3011y

<sup>106</sup> <https://shodhganga.inflibnet.ac.in> The sexual harassment at workplace

The main intention of these guidelines was to provide a platform for redressal and grievance mechanisms against workplace sexual harassment. Also in the parliament women MPs like Ms. Kamla Sinha were concerned about this issue and in 1994<sup>109</sup> she moved a bill in the parliament for prevention of sexual harassment of women at work places. Thus, this bill covered the offences under the sexual harassment at work place.

### (III) SEXUAL HARRASSMENT COMPLAINT FILING MECHANISM

The Ministry of Women and Child Development has launched “**She-Box**” which stands for “Sexual Harassment Electronic Box” an online platform for reporting complaints of sexual harassment arising at the workplace.

1. It can be used by both government & private sector employees.
2. Complaints received on She-Box shall be directed by the government and private sector employees.
3. Progress of the investigation can be monitored by both the Complainant and the Ministry of Women & Child Development.
4. ‘SHe-Box’, which can be accessed at [ww.shebox.nic.in](http://ww.shebox.nic.in), seeks to ensure effective implementation of India’s Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013 (“Anti -Harassment Law”))<sup>110</sup>.

#### (A) Grievance Redressal under the Anti-Harassment Law

‘India’s law on Prevention of Sexual Harassment at Workplace’ for information on India’s Anti-Harassment Law are as follows:-

- The Anti-Harassment Law was enacted in December 2013, almost 16 years after the guidelines issued by the Supreme Court of India in the case of Vishakha<sup>111</sup> per the Anti-Harassment Law, every

employer employing at least 10 employees is required to set up an ICC at each office or branch to investigate and redress sexual harassment grievances.

- The government is also required to set up a LCC in every district to deal with complaints of sexual harassment arising from the unorganized sector or from establishments where the ICC has not been constituted (on account of the establishment having less than 10 employees) or if the complaint is against the employer.
- The law imposes a penalty of up to Rs. 50,000 on employers who do not implement the provisions of the Anti-Harassment Law including failure to constitute an ICC.

#### (IV) Case laws

In the case of L. Nagaraju V Syndicate Bank<sup>112</sup> the court observed that Sexual Harassment may also include verbal innuendos and affectionate gestures which are inappropriate in the circumstances.

International Labour Organization (2001) considers sexual harassment as a violation of fundamental rights of workers, declaring that it constitute a problem of safety and health, a problem of discrimination, an unacceptable working condition and a form of violence, usually against women worker.

Vishakha V State of Rajasthan<sup>113</sup> by the Supreme Court of India where it has been held that sexual harassment results in violation of fundamental rights of gender equality and right to life and liberty<sup>114</sup>.

The Court in the case of Gayatri Balaswamy V ISG Nova soft Technologies Ltd<sup>115</sup>. Observed that

<sup>109</sup> <https://www.researchgate.net/publication/>

<sup>110</sup> <https://www.nishithdesai.com/>

<sup>111</sup> Vishakha and others v. State of Rajasthan, 1997 (7) SCC 323

<sup>112</sup> (2014) 2 ALD 758

<sup>113</sup> A.I.R 1997 SCC 3011

<sup>114</sup> as enshrined in our constitution of India

<sup>115</sup> 9 (2014) 6CTC 602

the moment harassment is established, emotional and mental injury is to be presumed.

**(V) POSH ACT 2013**

In India, this is governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (POSH Act). The Act protects women against male sexual harassment at work. In India, a historic piece of legislation known as the Protection of Women from Sexual Harassment at Workplace Act, 2013 (POSH Act 2013) aims to safeguard women against sexual harassment. Indian women are now better equipped to defend their rights and assert their independence at work. Through this Act, the government aims to give women a secure and safe working environment and has established procedures for preventing and resolving sexual harassment claims.

**(A) Key Provisions of the POSH Act, 2013**

1. Every employer is required to display a notice in the organisation providing details of the protection given to female employees against sexual harassment.
2. Employers must constitute an Internal Complaints Committee in their organisation to address complaints of sexual harassment.
3. A woman must head the ICC; at least half of its members should be women.
4. Employers must take steps to prevent sexual harassment and ensure that the victims are not victimised or discriminated against this sexual harassment.
5. Employers must provide necessary support and assistance to the complainant and make arrangements for her work in case she has to be transferred<sup>116</sup>.

**(i) ROOT CAUSE**

Sexual harassment has no definite causes it can be experienced by any women at any

particular period of time<sup>117</sup>. There are various root causes for this on first place:-

- Male Dominance
- .Minor Work Position
- Aggressive trait of male folk
- Misconception about friendly nature of nature
- Met with financial issue
- Less job opportunities

**(ii) Vishakha Case Guidelines**

Gender –based violence is a global pandemic that affect 1 in 3 women in their lifetime it is a long back a topic of constitutional debates .It is the key feature of Preamble, Fundamental rights, Fundamental duties and Directive principles of State policy. Sexual Harassment at workplace was first ever defined in the landmark judgement of Vishakha v. State of Rajasthan. The rules which were to be executed according to the Vishakha case Judgment are as per the following :-Duty of the Employer or other mindful people in work places and different organizations: It might be the obligation of the business or other capable people in work places or different establishments to counteract or discourage the commission of demonstrations of inappropriate behaviour and to give the methodology to the determination, settlement or indictment of demonstrations of lewd behaviour by making all strides required. All businesses or people involved for work are responsible to decide whether out in the open or private decisions to find a way to stop inappropriate behaviour.

- Action: The employer is held responsible for initiating discipline in his business whenever there is any misconduct or misbehaviour by making the employees follow the general and specific administrating rules.
- Complaint Mechanism: Whether or not such act constitutes an offense under law or a break of the administration

<sup>116</sup> <https://vakilsearch.com/blog/posh-act-2013-rules-and-prevention-of-sexual-harassment-at-workplace>

<sup>117</sup> [https://www.researchgate.net/publication/335567997\\_Sexual\\_Harassment\\_of\\_women\\_at\\_workplace](https://www.researchgate.net/publication/335567997_Sexual_Harassment_of_women_at_workplace)

governs, a proper objection system ought to be made in the business' association for review of the protest made by the casualty.

- A Complaints Committee at all working environments, headed by a lady representative, with (at the very least 50% of its individuals being ladies).
- Worker's Initiative: Employees ought to be permitted to raise issues of inappropriate behaviour at a labourers' meeting and in other suitable gathering and it ought to be positively examined in Employer-Employee Meetings.
- Third Party Harassment: Where inappropriate behaviour happens therefore of a demonstration or exclusion by any outsider, the business and individual in control will take fundamental and sensible steps to help the influenced individual as far as support and preventive activity is concerned.
- Justice Verma Committee Report, A three- member commission assigned to review laws for sexual crimes submitted its report to the government. The commission, headed by former Chief Justice of India, Justice JS Verma, has identified "failure of governance" as the root cause for sexual crime. It has criticized the government, the police and even the public for its apathy, and has recommended dramatic changes<sup>118</sup>.

### **(VI) Present scenario**

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Sexual Harassment at Workplace Bill that was passed in the Lok Sabha taking after the proposals of Justice Verma Committee Report turned into the Sensual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act looks to give assurance against lewd behaviour at working environment and for the counteractive action

and redressal of grumblings of inappropriate behaviour and for matters associated therewith. This Act was passed on 23rd April, 2013 and became effective on 9th December, 2013<sup>119</sup>. It characterizes lewd behaviour as set around by the Supreme Court in Vishakha and others v State of Rajasthan (1997) case. The demonstration characterizes one of the most splendid developments was the wake of # Me Too movements in India. So many great personalities came forward across the globe similar to this some random movement always activated against the rape and murder of a girl in 2012 in Delhi<sup>120</sup> which ultimately forced government to take strict actions against the rapists rather than normal punishments. The govt. also constituted a GOM (Group of Ministers) for the task to strengthen the framework related to legal and institutional development for the prevention of sexual harassment at workplace.

### **(VII) CONCLUSION**

It is therefore concluded Sexual harassment of women at workplace is the burning issue among women's rights movement in India since the beginning of 1980s. 'Just as a bird cannot fly with one wing only, a nation cannot march forward if the women are left behind stated by Swami Vivekananda. Law. Despite the preventive and redressal mechanism Sexual Harassment is still at an appalling stage. Women whether she is mother, a girl, a wife, a mother, a grandmother, overall could be a key of a family. Workplace Sexual harassment is a form of gender discrimination irrefutably hampers women's constitutional and fundamental rights to equality, justice, dignity and right to life guaranteed under Articles 14, 15 and 21 of the Constitution of India. Heinous crimes are being perpetrated over them every minute. In 1990 an organization named Baailancho Saad.ie., voice of women mobilized mass support against sitting chief minister of Goa, who was accused of harassing his

<sup>119</sup>ibid

<sup>120</sup>

[https://www.researchgate.net/publication/335567997\\_Sexual\\_Harassment](https://www.researchgate.net/publication/335567997_Sexual_Harassment)

<sup>118</sup> [https://www.ijrar.com/upload\\_issue/ijrar\\_issue\\_832.pdf](https://www.ijrar.com/upload_issue/ijrar_issue_832.pdf)

personnel secretary. There was a bulk of rallies and demonstrations which forced the sitting Chief Minister to resign. Sexual Harassment is not only a problem for women but society as a whole. It is very imp for the govt. to frame and develop new norms and alert the various organisation. Activists, human to do well research and take an immediate action if necessary and finds ways to facilitate in safeguarding the dignity of women.

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