

## Legal Protection of Women against Sexual Harassment at Workplace in India

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### ABSTRACT

The changing Global scenario has necessitated the women to acquire economic independence. The increase in total number of women work force has led to many problems such as gender discrimination, physical and mental harassment and more specifically the sexual harassment at workplace. It was in 1997 in *Vishaka v. State of Rajasthan* and others, that for the first time sexual harassment had been explicitly - legally defined and guidelines were issued to combat sexual harassment at workplace. In 2013 special legislation was enacted, which provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily waged worker or in ad-hoc capacity. Under this Act, every employer has duty to provide a safe working environment for at workplace; constitute an Internal Complaint Committee and conspicuously display the order constituting committee; organize workshops and other training programmes at regular intervals for sensitizing employees; provide assistance during any enquiry; Initiate action against the perpetrator. This Act provides for complaint mechanism and redressal. Implementation of the Law will be the responsibility of the Central Government in case of its own undertakings/establishments and of the State Governments in respect of every workplace established, owned, controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory. This law also has some shortcomings.

**Key words:** sexual harassment, workplace, Internal Complaint Committee,

### INTRODUCTION

In the last 20 years, there has been a significant induction of women into the work force, irrespective of whether they are highly trained women entering the information technology, teaching, medicine, law, commerce, management, media, industry or unskilled women joining the ranks of labourers in export promotion companies like the garment and food processing industry. With the change in the outlook, attitudes and approach towards living, it has now become a necessity by and large for the families with inadequate income to supplement their requirements through additional earnings. The changing Global scenario has necessitated her to acquire economic independence. The increase in total number of women work force has led to many problems such as gender discrimination, physical and mental harassment and more specifically the sexual harassment at workplace.

## INTERNATIONAL POSITION

The Universal Declaration of Human Rights like the International Covenant of Economic, Social and Cultural Rights, 1966 and the International Covenant of Social and Political Rights, 1966 lay stress on equality between men and women. The other covenants relating to labour have also referred to the equality to women and the need for special action to provide justice to them. But the most important step that the General Assembly of UN took was the adoption of Convention on the Elimination of all Forms of Discrimination Against women (CEDAW) on December 18, 1979, laying down the broad definition of discrimination specifically against women that gained worldwide acceptance. Article 11 of the Convention requires the States “ to take appropriate measures to eliminate discrimination against women in the field of employment” followed by Art 22 which states, “equality in employment can be seriously impaired when working women are subjected to gender specific violence such as sexual harassment at the workplace and Art 24 further requires that “states should include in their reports, information about sexual harassment and other forms of violence or coercion in the workplace”. It was followed by General recommendation No. 19 on violence against women which was adopted by the Committee on the Elimination of Discrimination against women in January, 1992.

Although this recommendation is not binding on ratifying states but it is important because it further clarifies the term sexual harassment given by CEDAW and to be used by the national courts dealing with claims relating to sexual harassment where the domestic law might be silent or not clear. Convention on Elimination of Discrimination against Women (CEDAW) adopted by the General Assembly in 1979 has come to be recognized as an **International Bill of Rights for Women**.

The equality principles were reaffirmed in the Second World Conference on Human Rights at Vienna in June 1993 and in the Fourth World Conference on Women held in Beijing in 1995. India was a party to this Convention and other Declarations and is committed to actualize them. In addition to this concern of ILO is indicated in 1991 International Labour Conference resolutions concerning ILO action for women workers, requesting the International Labour Office to develop guidelines, training and information materials on issues of specific and major importance to women, such as sexual harassment at the workplace.

## INDIAN POSITION

### ( i ) Constitutional provisions

Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. However, it also not true that all cases of sexual harassment are such- where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault.

The question is not whether women have the right to bodily integrity, as this right is already adumbrated under **Article 1** of the Constitution of India. Article.21, which guarantees the right to life and liberty to men and women both alike- but whether it is really imperative to take a decisive step towards extirpating this evil and make the contemporary and future society a safe place for women.

In instances where women have reported such illegal and unwelcome behavior, there have

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been significant victories in the past decade or so. Also considering the fact the sometimes these victories are achieved after a wait of a decade or so.

In *Rupan Deol Bajaj v. K P S.Gill*,<sup>1</sup> senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab- Mr. K P S.Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter. The Supreme Court in January, 1998 fined Mr.K P S.Gill Rs.2.5 lacs in lieu of three months Rigorous Imprisonment under Sections. 294 and 509 of the Indian Penal Code.

It was in 1997 in *Vishaka v. State of Rajasthan*<sup>2</sup> and others, that for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly 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, non-verbal conduct being sexual

In nature.

It was in this landmark case that the sexual harassment was identified as a separate illegal behaviour. The critical factor in sexual harassment is the unwelcome ness of the behaviour. Thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator- which is to be considered.

In the abovementioned case, the judgment was delivered by J.S.Verma. CJ, on behalf of Sujata Manohar and B.N.Kirpal, JJ., on a writ petition filed by 'Vihska'- a non Governmental organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article.21 of the Constitution.

The immediate cause for filing the petition was the alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines:

1. All the employers in charge of work place whether in the public or the private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation, he should take the following steps:
  - a) Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal/ non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
  - b) The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules 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, hygiene- to further ensure that there is no hostile environment towards women and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. Where such conduct amounts to specific offences under the Indian Penal Code or any other law the employer shall initiate appropriate action in accordance with the law, by making a complaint with the appropriate authority.
3. Victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

As stated by the Supreme Court, these guidelines are applicable to:

- a) The employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints;
- b) Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity- in the government, private or organized sector come under the purview of these guidelines.

#### **Preventive Steps:**

1. Express prohibition of sexual harassment should be notified and circulated.
2. Inclusion of prohibition of sexual harassment in the rules and regulations of government and public sector.
3. Inclusion of prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 by the private employers.
4. Provision should be made for appropriate work conditions for women.

#### **Procedure pertaining to filing of complaints:**

1. Employers must provide a Complaints Committee which is to be headed by a woman; of which half members should be women.
2. Complaints Committee should also include an NGO or other organization- which is familiar with sexual harassment.
3. Complaints procedure should be time bound.
4. Confidentiality of the complaints procedure has to be maintained.
5. Complainant or witnesses should not be victimized or discriminated against- while dealing with complaints.
6. The Committee should make an annual report to the concerned Government department and also inform of the action (if any) taken so far by them.

#### **Miscellaneous Provisions:**

1. Guidelines should be prominently notified to create awareness as regards the rights of the female employees.
2. The employers should assist the persons affected, in cases of sexual harassment by outsiders or third parties.
3. Sexual harassment should be discussed at worker's meetings, employer-employee meetings and at other appropriate forums.
4. Both Central and State governments are required to adopt measures including legislations to insure that private employers also observe these guidelines.

***Apparent Export Promotion Council v. A K.Chopra***,<sup>3</sup> is the first case in which the Supreme Court applied the law laid down in Vishaka's case and upheld the dismissal of a superior officer of the

Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article.21 of the Constitution. In this judgement also the Court had drawn strength from the International Labour Organisation Seminar held in Manila in 1993.. The Court had also drawn on CEDAW, 1979 and the subsequent Beijing Declaration. In both cases the Supreme Court observed, that " in cases involving Human Rights, the Courts must be alive to the International Conventions and Instruments as far as possible to give effect to the principles contained therein- such as the Convention on the Eradication of All forms of Discrimination Against Women, 1979, CE DAW and the Beijing Declaration directing all state parties to take appropriate measures to prevent such discrimination."

Again in *State of Punjab v. Ramdev Singh*,<sup>4</sup> the Apex Court held that sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right to privacy and sanctity of a female . It is a serious blow to her supreme honour .

The guidelines and judgments have identified sexual harassment as a question of power exerted by the perpetrator on the victim. Therefore sexual harassment in addition to being a violation of the right to safe working conditions, is also a violation of the right to bodily integrity of the woman.

## ( ii ) Legal Provisions

### Provisions of the Indian Penal Code:

In cases where the accused sexually harasses or insults the modesty of a woman by way of either- obscene acts or songs or- by means of words, gesture, or acts intended to insult the modesty of a woman, he shall be punished under Sections.294, 354 and 509 respectively.

Under **Section 294** the obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with the mental condition, has often to be inferred from proved facts. However, another important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place.

**Section 354**, IPC deals with assault or criminal force to a woman with the intent to outrage her modesty and lays down that :

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both.

**Section.509 of IPC**, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Thus, this Section requires:

1. Intention to insult the modesty of a woman.
  2. The insult be caused by
    - i) Uttering any word or gesture, or
    - ii) Exhibiting any object with the intention that such word, gesture or object be heard or seen by such a woman, or

iii) By intruding upon the privacy of such woman.

Civil suit can be filed for damages under tort laws. That is, the basis for filing the case would be mental anguish, physical harassment, loss of income and employment caused by the sexual harassment.

Under the Indecent Representation of Women (Prohibition) Act 1987, if an individual harasses another with books, photographs, paintings, films pamphlets, packages etc containing “indecent representation of women”; they are liable for a minimum sentence of 2 years.

But none of these provisions touch sexual harassment directly. These are too general, too indirect or too vague.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislation in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha on September 3, 2012. It was passed by the Rajya Sabh on February 26, 2013. The Bill got the assent of the President on April 23, 2013. The Act came into force from December 9, 2013. This statute superseded the *Vishakha* Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

### **Salient features of the Act are as follows:**

1. It proposes a definition of sexual harassment under Sec 2(n) which is as laid down by the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* (1997). Additionally it recognizes the promise or threat to a woman's employment prospects or creation of hostile work environment as 'sexual harassment' at workplace and expressly seeks to prohibit such acts.
2. It provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily wage worker or in ad-hoc capacity. Students, research scholars in colleges/university and patients in hospitals have also been covered. Further, the Act seeks to cover workplaces in the unorganized sectors.
3. The Act provides for an effective complaints and redressal mechanism. Under chapter II, every employer is required to constitute an Internal Complaints Committee. The Internal Committee shall consist of the following members to be nominated by the employer, namely:—
  - a. a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees;
  - b. not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
  - c. one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment;
4. Since a large number of the establishments (41.2 million out of 41.83 million as per Economic Census, 2005) in our country have less than 10 workers for whom it may not be feasible to set up an Internal Complaints Committee (ICC), the Act provides for setting up of Local Complaints Committee (LCC) to be constituted by the designated District Officer at the district or sub-district levels, depending upon the need.<sup>5</sup> This twin mechanism would ensure that women in any workplace, irrespective of its size or nature, have access to a redressal mechanism. The LCCs will enquire into the complaints of sexual harassment and recommend action to the employer or District Officer.
5. Chapter VI of the Act entrusts certain duties upon the employer.<sup>6</sup> Under which, every



employer has to;

1. Provide a safe working environment for at workplace;
  2. Constitute an Internal Complaint Committee and conspicuously display the order constituting committee;
  3. Organize workshops and other training programmes at regular intervals for sensitizing employees;
  4. Provide assistance during any enquiry;
  5. Initiate action against the perpetrator, and
  6. Provide assistance to the women if, she prefers to file complaint under the provisions of Indian Penal Code.
6. Chapter IV of the Act prescribes the procedure to be followed in filing complaint. <sup>7</sup>Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident. Where the aggrieved woman is unable to make complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section. In the absence of internal complaint committee, complaint shall be filed with the local committee.
7. The Complaint Committees is required to complete the enquiry within a time period of three months and a period of 60 days has been given to the employer/District Officer for implementation of the recommendations of the Committee. On request from the complainant, the committee shall provide for reconciliation. Complainant may also seek other remedies, including initiating criminal proceedings under the provisions of any other laws in existence.

### **Penalty and Appeal**

8. Employers who fail to comply with the provisions of this Act, will be punishable with a fine which may extend to Rs. 50,000<sup>8</sup>
9. For the purpose of determining the sums to be paid to the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, shall have regard to <sup>9</sup>
  - a. the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
  - b. the loss in the career opportunity due to the incident of sexual harassment;
  - c. medical expenses incurred by the victim for physical or psychiatric treatment;
  - d. the income and financial status of the respondent;
  - e. feasibility of such payment in lump sum or in installments.
10. The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality. <sup>10</sup>

## CONCLUSIONS AND SUGGESTIONS

There is lack of awareness among women about these laws. If they are aware, they hesitate to complain as the implementation of these laws is not proper. It takes a quite long time to get any relief. Women do not report these cases due to social stigma attached to them, after the complaint is filed and the fear of losing their job. .

1. Each internal Committee requires membership from an NGO or association committed to the cause of women. There could be difficulties if sufficient number of such number of NGOs not available. The role of employers, trade unions and state instrumentalities, NGOs and as well as of media in creating a healthy environment for the dignity of workers is of vital importance in preventing and combating sexual harassment at workplace.

2. The complaint committee has been given the power of civil court, but they do not require a member of legal background.

3. There is no stipulated liability for employers in cases of employee-to-employee harassment, something upheld in many other countries.

4. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be.<sup>11</sup> This provision will deter the victim to file complaint.

Implementation of the Law will be the responsibility of the Central Government in case of its own undertakings/establishments and of the State Governments in respect of every workplace established, owned, controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory. Besides, the State and Central Governments will oversee implementation as this legislation casts a duty on the Employers to include a Report on the number of cases filed and disposed of in their Annual Report. Organizations, which do not prepare Annual Reports, would forward this information to the District Officer.

Through this implementation mechanism, every employer has the primary duty to implement the provisions of law within his/her establishment while the State and Central Governments have been made responsible for overseeing and ensuring overall implementation of the law. The Governments will also be responsible for maintaining data on the implementation of the Law. In this manner, this Act will create an elaborate system of reporting and checks and balances, which will result in effective implementation of the Law.

## END NOTES AND REFERENCES

1 AIR 1996 SC 309.

2 AIR 1997 SC 3011.

3 AIR 1999 SC 625.

4 AIR 2004 SC 1290.

5. Section 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and



Redressal) Act, 2013.

6. Section 19 of the Act.

7. Section 9.

8. Section 26.

9. Section 15.

10. Section 17.

11. Section 14.

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