

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 3**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# How Far have we Come in Subsiding the Impediment of Sexual Harassment at Workplaces in India?

---

SHREYA GUPTA<sup>1</sup> AND SAUMYA SINGH<sup>2</sup>

## ABSTRACT

*The dynamics of the Indian economy have evolved over time to witness participation by a considerably larger number of women in the working sector. With a change in the economic status of women, the impediment of sexual harassment at workplaces has also assumed many facets. Today, sexual harassment is an epidemic which has spread across formal and informal sectors of the economy and it impacts individuals, groups and entire organizations in profound ways. This paper aims to explore how sexual harassment at workplaces is a form of gender inequality that has created a latent barrier, predominantly for females which not only violates their basic human rights but also results in negatively affecting the working-class public spheres, at large. In India, after a few appalling cases came to light, the first ever legislative safeguard against workplace sexual harassment was afforded to women in 2013 when the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted by the Ministry of Women and Child Development. This paper has attempted to not only trace the evolution of this law but also examine its key provisions and implementation so as to determine and understand how far we have come as a society in subsiding the impediment of sexual harassment at workplaces.*

**Keywords:** Sexual Harassment, Women, Workplace, Society, Law.

## I. INTRODUCTION

The participation of women in the economic sector is necessary for their economic upliftment, empowerment and sustainability. The engagement of women in this sector is also essential for the positive and healthy growth of a country and hence, it becomes increasingly important to get rid of all the hindrances which come in the way of the involvement of women in the working or economic sector. Prevalent sexual harassment at workplace is one such impediment which discourages women from participating and continuing to work. More often than not, it is

---

<sup>1</sup> Author is a student at Gujarat National Law University, India.

<sup>2</sup> Author is a student at Gujarat National Law University, India.

because of the discomfort and embarrassment that is associated with speaking up about the sexual conduct of a colleague or employer which the woman is subjected to that stops her from complaining.<sup>3</sup>

Sexual Harassment is recognized as a form of discrimination which is based on the grounds of sex and thus, is contrary to the principle of equal treatment between men and women. There are various theories and beliefs revolving around the causes or reasons for sexual harassment. Theories revolving around military conquest and sadism have recently been recognised but the theories based on power, domination and patriarchal ideologies have existed and been a major cause for sexual harassment for a long period of time. Unfortunately, sexual violence has become so ingrained in the society that it is now considered as a part of the normal life of a working woman.<sup>4</sup> Nevertheless, the concept of sexual harassment was acknowledged and coined in the early 1970s when some particular cases relating to harassment of women at workplace became notable in the Western countries and also in India which made it evident that women required protection and safety at their respective workplaces.<sup>5</sup>

The Supreme Court in *C.B. Muthamma v. Union of India*<sup>6</sup>, rightly and justly observed that, “the executive in India, since independence have espoused the views, which are purely patriarchal and approve of only stereotypical roles of women. As a result of the same, if the conventional role of a woman stands in the way of performing her official duties it becomes objectionable and she may be asked to resign...”. Sexual harassment thus, is all about asserting power and control over women at workplaces. At the micro level, it undermines the confidence and efficiency of an individual by making them vulnerable and insecure while at the macro level, it leads to a hostile and unprofessional working environment for the individual.

Sexual Harassment may be considered and explained as coercive, exploitative, abusive and unprofessional behavior which is also a serious affront to a woman's dignity, her self-esteem, her right to private life and the right to live with dignity. It is important for us to address as a society that an unfavorable working environment for women by undermining their capabilities as workers seek to institutionalize the subordination of women.

In 1997, the Supreme Court of India laid down rules and guidelines in *Vishaka v. State of*

---

<sup>3</sup>Trishala Singh, *Prevention of Sexual Harassment of Women in the Workplace: Seeking Gender Equality at Work in India*, 18 J. OF INT’L WOMEN STUDIES 104, 104-113 (2016).

<sup>4</sup>Ann Numhauser-Henning & Sylvaine Laulom, *Harassment related to Sex and Sexual Harassment in 33 European countries*, 1 EUROPEAN NETWORK OF LEGAL EXPERTS IN THE FIELD OF GENDER EQUALITY: DISCRIMINATION VERSUS DIGNITY, EUROPEAN UNION 102, 102-103 (2012).

<sup>5</sup>Pallavi Kapila, *Theoretical Perspectives to Sexual Harassment of Women at Workplace*, 6 INT’L J. OF HUMANITIES & SOCIAL SCIENCE INVENTION 32, 32-35 (2017).

<sup>6</sup>*C.B. Muthamma v. Union of India*, (1979) 4 SCC 260.

Rajasthan, making it mandatory for employers to take specific steps to protect female employees from sexual harassment in the workplace and to provide procedures and plan of action for the resolution, settlement or prosecution of such crimes. “*Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right,*” the judges ruled.<sup>7</sup> However, the Vishaka guidelines failed to explicitly address sexual harassment of women in the informal sector (which the POSH Act, 2013 tried to cover) due to various loopholes in the system which implemented it. Therefore, it can be rightly said that today, sexual harassment of women at workplace is an extremely important kind of violence, which requires considerable legal and social attention by lawyers, activists, students, academicians and even the common people.

## II. DEFINING SEXUAL HARASSMENT

According to the United Nations Entity for Gender Equality and the Empowerment of Women, “Sexual harassment is any form of unwelcome sexual advance, request for sexual favor, physical or verbal conduct or gesture of a sexual nature, or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offence, humiliation or discomfort to another.”<sup>8</sup> Sexual Harassment usually involves some patterns of behavior that can take the form of a single incident and may occur between persons of the same or opposite sex. It can involve both males and females as either the victims or the offenders.

The International Labor Organization (ILO) is one among the specialized agencies of the United Nations system and has acted as a vanguard in addressing the issues regarding discrimination of working women, especially through the establishment and adoption of the Discrimination (Employment and Occupation) Convention, 1958. Under the convention, the ILO has listed numerous examples of sexual harassment in employment which include insults, jokes, derogatory sexual remarks, insinuations etc. In short, the ILO has concluded that any act, the unfavorable nature of which could not be mistaken by its author, shall be deemed to fit in the category of sexual harassment. The most recent report by the ILO proves that the problem of sexual harassment has acquired menacing proportions. The report also estimated and established that one third of women in the organized sector have been sexually harassed at workplace.<sup>9</sup>

---

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

<sup>8</sup> UN WOMEN-UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, <https://www.unwomen.org/en> (last visited June 11, 2021).

<sup>9</sup>International Labor Office, *Sexual Harassment at Work*, INTERNATIONAL LABOR ORG. (June 2, 2021), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_decl\\_fs\\_96\\_en.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_96_en.pdf).

According to the National Center for Victims of Crime, “Sexual harassment can take many forms including attacks such as rape or attempted rape, as well as any unwanted sexual contact or threats.”<sup>10</sup> Sexual harassment can occur when someone touches any part of another person’s body in a sexual way, without that person’s consent.

In most sexual harassment cases, the psychological element of the act is usually neglected and more focus is given on the physical aspects of the act. But this is a major and popular misconception as the psychological element which includes any subtle gesture or innuendo, is equally important. Women around the world and across all professions and ages are confronted with the problem of sexual harassment. This implies that no profession is completely free from sexual harassment and no woman is protected and safe irrespective of the country she resides in and the various legislative frameworks in place which claim to protect them.<sup>11</sup> The studies suggest that 91% of the victims of rape, sexual assault and sexual harassment are female and 9% are male throughout the world.<sup>12</sup> When we look at Indian statistics, the percentage of women who have been victims of rape increases while that of men decreases. The sex imbalance in the data is due to the presence of hundreds of years old gender stereotypes which discriminate between a man and a woman and demand control over a woman’s body. Sexual harassment acts as a tool for maintaining that order by asserting control through violence. Therefore, sexual harassment is less about the offenders getting pleasure for sex and more about the offender enjoying asserting power and control over someone with the intention of outraging that person’s dignity and modesty.<sup>13</sup>

Sexual Harassment, especially at workplace can be classified into two main categories. The first category is the one where the accused or harasser guarantees to give a monetary or economic advantage to the victim. This category works on the principles of *quid pro quo* i.e. it refers to situations or circumstances where a superior employer promises promotion, advancement, higher pay etc. in return for sexual gratification from the victim. The second category is the one where there is no difference in the status or financial situation of the victim, but the constant harassment leads to uncomfortable and hostile working conditions in the workplace.<sup>14</sup> In developing countries like India, the scarcity of jobs and the pressure of survival

---

<sup>10</sup> NATIONAL CENTER FOR VICTIMS OF CRIME, <https://victimsofcrime.org/> (last visited June 1, 2021).

<sup>11</sup> Trishala Singh, *supra* note 3.

<sup>12</sup> National Sexual Violence Resource Center, *Statistics about Sexual Violence* (2015).

<sup>13</sup> Gurvinder Kalra & Dinesh Bhugra, *Sexual violence against women: Understanding cross-cultural intersections*, 55 INDIAN J. OF PSYCHIATRY, 244-249 (2013).

<sup>14</sup> *Id.*

in male dominated workspaces forces women to keep silent regarding these issues which ultimately leads to sexual harassment becoming structural.

### III. WHY DO WE NEED A SPECIFIC SEXUAL HARASSMENT LAW CATERING TO WORKPLACES?

In recent times, the employment of women has increased many-fold with the increase in economic development, industrialization, and modernization in all spheres of economic activities. Globalization has also thoroughly influenced the increase in the rate of employment and employment opportunities for women in the organized sector. But unfortunately, the increase in employment of women has also lead to a simultaneous increase in social evils like gender discrimination, mental harassment and sexual harassment at work places all around the globe.<sup>15</sup> As per the latest report of the National Crime Records Bureau, in India, there has been a considerable increase in the number of cases reported on sexual harassment during the last six years.<sup>16</sup> It is also essential to keep in mind that the data of these reports does not include the women labor force employed in the unorganized sector who are constantly exposed to sexual harassment and even rape.

Today, there are several provisions in the Indian Penal Code, 1860 that deal with acts associated with sexual assault and harassment but unfortunately the presence of these provisions does not always make it simple for a female employee to file a complaint under criminal law. As a matter of fact, fewer women subjected to sexual harassment make formal complaints about the alleged behavior.<sup>17</sup> A survey conducted by the National Commission for Women revealed that amidst working women, while 40 percent of the victims surveyed said that they mostly ignore mental or sexual provocation, 3.54 percent said they reported these to their supervisors, 7.8 percent to their colleagues and only 1.4 percent to the police. Among the lot, a meagre 10 percent said that they protested against any form of sexual or mental provocation while 9 percent said that they warned the offender.<sup>18</sup> The above mentioned figures raise an issue as to why so many working women do not report the incidences of sexual harassment that they face at their work place.

Studies reveal that there are various factors which come into play and dissuade many women

---

<sup>15</sup> S.C. Srivastava, *Sexual Harassment of Women at Work Place: Law and Policy*, 39 INDIAN J. OF INDUSTRIAL RELATIONS 364, 364-390 (2004).

<sup>16</sup> MINISTRY OF HOME AFFAIRS, CRIME IN INDIA 2019 1 (National Crime Records Bureau, 2019).

<sup>17</sup> Sandy Welsh & James E. Gruber, *Not Taking It Any More: Women Who Report or File Complaints of Sexual Harassment*, CANADIAN REV. OF SOC. & ANTHROPOLOGY 559,559-60 (1999).

<sup>18</sup> S.C. Srivastava, *supra* note 11.

from speaking up. The process is replete with instances of blaming the victim.<sup>19</sup> Very often, women are dismissed by establishing them as overly sensitive and unreasonable. If they are somehow able to file a complaint, they tend to receive backlash and are unfairly terminated, they have a subjective fear of retaliation by the employer. Women employees are also more likely to invoke informal ways of resolving issues of sexual harassment and ignore the behavior due to a lack of availability of appropriate legal awareness and aid. In addition, people are often unreceptive, unsympathetic and the woman ends up feeling socially isolated or disregarded. Thus, it is an alarming situation which makes it increasingly important to have a legislation specifically aimed at protecting women from sexual harassment in workplaces.

#### **IV. EVOLUTION OF THE LAW ON WORKPLACE SEXUAL HARASSMENT IN INDIA**

##### **(A) Constitutional Provisions**

Promotion of gender equality is an ideal that lies at the very foundation of India's Constitutional structure. Women have been accorded protection through Fundamental Rights, Fundamental Duties as well as the Directive Principles of State Policy. The principle of equality has been enshrined in Articles 14-18 of the Indian Constitution. While Article 14 guarantees equal protection of law within the Indian territory to all citizens; Article 15, most explicitly, prohibits discrimination on five major grounds, sex being one. Moreover, Article 15(3) exclusively permits incubation of social welfare policies, legislations and initiatives aimed at protection of women's interests by affirming that, "nothing shall prevent the state from making any special provision for women and children"<sup>20</sup> and garners scope for affirmative action. Apart from the equality rights, citizens of India have a right against exploitation under article 23. Human trafficking, begar and other variations of forced labor have been prohibited and made punishable under the law.<sup>21</sup> Women are also afforded protection under this article.

Moreover, the Directive Principles of State Policy enshrined in part IV of the Indian constitution uphold protection of women and their interests. Some of the socio-economic goals for women that social and labor legislations seek to accomplish have been acknowledged in this section of the constitution that talks about DPSPs: Securing an equal right to an adequate means of livelihood<sup>22</sup>, equal remuneration for equal work for both men and women<sup>23</sup>, ensuring

---

<sup>19</sup> L. Camille Hebert, *Why Don't "Reasonable Women" Complain About Sexual Harassment?*, 82 INDIANA LAW J. 711, 712-743 (2007).

<sup>20</sup> INDIA CONST. art. 15, §3.

<sup>21</sup> INDIA CONST. art. 23.

<sup>22</sup> INDIA CONST. art. 39 (a).

<sup>23</sup> INDIA CONST. art. 39(d).

just and humane work conditions along with provisions of maternity relief<sup>24</sup>, promotion of the educational and economic interests of the weaker section and ensuring protection from social injustice and exploitation<sup>25</sup>. Part IVA on Fundamental Duties which was inserted in the constitution by the forty-second amendment act in 1976 also provides for renouncement of practices derogatory to the dignity of women.<sup>26</sup>

Despite the existence of such provisions in the constitution for protecting women's interests, catering to their specific needs and for facilitating gender equality; sexual harassment of women at workplaces was an issue that did not receive acknowledgement by either of the three organs of our government for a very long time.

### **(B) Criminal Law Provisions**

Workplace sexual harassment of women is not dealt with explicitly by the criminal law in India. However, several provisions of the Indian Penal Code (IPC), 1860 do cover acts pertaining to sexual harassment in general and make them punishable offences.<sup>27</sup>

Section 354A of the IPC defines sexual harassment by covering a broad spectrum of acts and behaviors inclusive of unwanted verbal or physical advances of any sort. Section 354B deals with assault or use of criminal force to disrobe. The act of Voyeurism has been defined and criminalized under Section 354C. Section 354D talks about the offence of stalking.<sup>28</sup>

Section 509 of the IPC prescribes a punishment of simple imprisonment for a term extendable to three years and fine for anyone who "intends to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman".<sup>29</sup>

Section 294 provides that whoever tends to annoy others, "does any obscene act in a public place, sings, recites or utters any obscene song, ballad or words, in or near any public place" shall invite either a term of imprisonment extending upto three months or a fine, or both.<sup>30</sup>

Section 357 is the provision of IPC that gives a definition to rape by a man against a woman. It provides for a rigorous imprisonment of seven years to life and also imposes a liability to

---

<sup>24</sup> INDIA CONST. art. 43.

<sup>25</sup> INDIA CONST. art. 46.

<sup>26</sup> INDIA CONST. art. 51(A)(e).

<sup>27</sup> S.C. Srivastava, *supra* note 11, at 369.

<sup>28</sup> Indian Penal Code, 1860, § 354, No. 45, Acts of Imperial Legislative Council, 1860 (India).

<sup>29</sup> Indian Penal Code, 1860, § 509, No. 45, Acts of Imperial Legislative Council, 1860 (India).

<sup>30</sup> Indian Penal Code, 1860, § 294, No. 45, Acts of Imperial Legislative Council, 1860 (India).



pay a fine.<sup>31</sup>

As enumerated above, there are provisions in the IPC which enable women to file a criminal complaint for sexual harassment or related acts/behaviors but particular attention and recognition was given to workplace sexual harassment only by the honorable Supreme Court of India in its landmark and revolutionary judgement of *Vishaka v. State of Rajasthan*<sup>32</sup>.

### **(C) Vishaka v. State of Rajasthan**

Bhanwari Devi, a Dalit woman was employed by the Government of Rajasthan for its rural development programme. In 1922, while she was fighting against the then prevalent social evil practice of child marriage, she was sexually harassed in the course of her work and was brutally gang-raped in front of her husband by five Gujjar men. That is when the urgency of a specific legislative safeguard for protection of women against sexual harassment at places of work was highlighted.<sup>33</sup> Worse times came when a trial court in Rajasthan acquitted all the five men accused in the case. As it came to be recognized that Bhanwari Devi was harassed at her place of work, various women's organizations that were active on a national scale decided to back her battle for justice. A writ petition was filed in the Supreme Court asking for guidelines to help organizations acknowledge, prevent and redress workplace sexual harassment in an efficient manner. Thus, in an epoch-making decision, the Supreme Court's three judge bench in this case made a salient contribution to the evolution of the code against workplace sexual harassment.<sup>34</sup>

For the very first time, the obvious legislative insufficiency was acknowledged and workplace sexual harassment was recognized as a violation of human rights. A formal procedure along with specific rules and guidelines was laid down by the apex court to check and prevent harassment in the workplace. While devising a definition and framing the said Vishaka guidelines, the Supreme Court relied on the CEDAW, United Nations Convention on the Elimination of all Forms of Discrimination against Women which was adopted in 1979. India has both signed as well as ratified this convention but with certain reservations.<sup>35</sup> While issuing the guidelines under article 32 of the Indian constitution, the honorable judges stated that, "in absence of domestic law occupying the field, to formulate measures to check the evil of sexual harassment of the working women at the workplaces, the contents of International Conventions

---

<sup>31</sup> Indian Penal Code, 1860, § 357, No. 45, Acts of Imperial Legislative Council, 1860 (India).

<sup>32</sup> *Vishaka & Ors. v. State Of Rajasthan & Ors.*, AIR 1997 SC 3011.

<sup>33</sup> NISHITH DESAI ASSOCIATES, PREVENTION OF SEXUAL HARASSMENT AT THE WORKPLACE (POSH), LEGAL AND HR CONSIDERATIONS 1-16 (Nishith Desai Associates 2020).

<sup>34</sup> S.C. Srivastava, *supra* note 11.

<sup>35</sup> Trishala Singh, *supra* note 3.

and norms are significant for the purpose of interpretation and guarantee of gender equality, right to work with human dignity (Articles 14,15,19 (1) (g) and 21) of the constitution and the safeguard against sexual harassment implicit therein”.<sup>36</sup> Until a specific legislation was drafted and enacted, the court made it mandatory for all organizations, both in public as well as private sector, to follow these guidelines as the word of law.

The following guidelines were formulated and put forth in the case in 1997<sup>37</sup>:

1. The Employer or other responsible persons became duty bound to prevent or deter the commission of acts of sexual harassment and to provide procedures for resolution.
2. For this purpose, the term sexual harassment was formally and clearly defined.
3. Preventive steps were clearly outlined: prohibition of harassment was to be notified, published and circulated in appropriate ways. The rules and regulations of government and public sector bodies had to incorporate rules and regulations prohibiting harassment and provide for appropriate penalties.
4. Private employers had to include the prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
5. Hostile work environments had to be eliminated for women in the workplace. Work conditions had to be appropriate even for leisure, hygiene and health.
6. In case the conduct qualified as an offence under the Indian Penal Code or under any law, the employer was responsible for initiating action in accordance with the law with the appropriate authority.
7. Where the commission of an offence amounted to misconduct as defined in the service rules, then the appropriate disciplinary action had to be initiated by the employer in accordance with the rules.
8. An appropriate complaint mechanism had to be in place for redressal of the complaint made by any victim. The complaint mechanism had to ensure time bound action on the complaints.
9. There should be a Complaints Committee to look into complaints and should be adequate to provide counseling and support service and maintain confidentiality.
10. It further provided that it should be headed by a woman and not less than half its members should be women. Also, to pre-empt the possibility of use of any pressure or

---

<sup>36</sup> Vishaka & Ors. v. State Of Rajasthan & Ors., AIR 1997 SC 3011.

<sup>37</sup> *Id.*

influence from senior levels, the committee would involve a third party who was familiar with the issue.

11. Employees should be encouraged to raise various issues in meetings.
12. Awareness had to be created in the workplace by prominently notifying the guidelines.
13. In case the harassment occurred as a result of an act or omission by any third party or any outsider, the employer had to ensure assistance and support to the victim.

The court held that, “each such incident results in violation of fundamental rights of gender equality and the right of life and liberty”.<sup>38</sup> Moreover, the intersection between “inalienable right to work” and “right to work with dignity” duly positioned sexual harassment in the workplace as a recognizable offence.<sup>39</sup> Thereafter, the Vishaka guidelines were adopted as the foundation for drafting of The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act 2013. Ironically, Bhanwari Devi’s appeal against the trial court judgement that acquitted all the accused is still pending in the Rajasthan High Court, twenty-six years after the crime. Bhanwari Devi claims that, “the court of law and the government has failed me but I got justice in the people’s court and in the god’s court”<sup>40</sup>, given that four of the five men who were accused have died since the incident.

#### **(D) Other Important Judgements Post Vishaka**

After the pronouncement of the Vishaka judgement and formulation of the guidelines pertaining to workplace sexual harassment, an issue that had long been swept under the carpet had come into the limelight. As a nationwide discourse on this issue had already begun, a few other cases relating to workplace sexual harassment made a significant contribution to the same. It especially becomes important to highlight two major cases that considerably added to the existing legal literature pertaining to the issue of workplace sexual harassment in India.

##### **1. Apparel Export Promotion Council v. A.K Chopra<sup>41</sup>**

After Vishaka, this was the first case in this respect before the apex court<sup>42</sup>. The Supreme Court found a senior employee of Delhi based Apparel Export Promotion Council guilty of sexually

---

<sup>38</sup> *Id.*

<sup>39</sup> B. D. Singh, *Issue of Sexual Harassment- A Legal Perspective*, 36 INDIAN J. OF INDUSTRIAL RELATIONS 79, 79-91 (2000).

<sup>40</sup> Archana Nathan, *Dalit woman’s rape in ‘92 led to India’s first sexual harassment law- but justice still eludes her*, SCROLL.IN (Oct. 22, 2018, 7:00 AM), <https://scroll.in/article/899044/dalit-womans-rape-in-92-led-to-indias-first-sexual-harassment-law-but-justice-still-eludes-her>.

<sup>41</sup> Apparel Export Promotion Council v. A.K Chopra, (1999) 1 SCC 759.

<sup>42</sup> NISHITH DESAI ASSOCIATES, *supra* note 29.

harassing a subordinate female employee at the workplace and upheld his termination by reiterating the Vishaka judgement. The Supreme Court ruled that physical contact wasn't necessary for an act/behavior to amount to sexual harassment and an absence of physical contact can't stop a female worker from charging a male colleague with sexual harassment. Thus, the definition of sexual harassment was broadened by the court as, "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favors and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her"<sup>43</sup>.

## **2. Medha Kotwal Lele & Ors. V. Union of India & Ors.<sup>44</sup>**

Dr. Medha Kotwal of Aalochana, an NGO, wrote a letter wherein she talked about various individual cases of sexual harassment from which it was evident that the Vishaka guidelines pronounced by the Supreme Court were not being followed and implemented properly. While taking cognizance of this matter as that of concern, the Supreme Court converted the said letter into a writ petition and undertook monitoring of effective implementation of the Vishaka guidelines by organizations across the country. The state governments were asked to file affidavits that outlined the steps taken by them for ensuring a worthy implementation of the Vishaka guidelines. Given the highly unsatisfactory state of affairs, the apex court instructed the state governments to put into effect certain adequate mechanisms to ensure an effective implementation of the guidelines. The court affirmed in its judgement that, "the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect"<sup>45</sup>. In case of non-compliance and/or non-adherence of the Vishaka guidelines, it was held that the aggrieved parties could approach the respective high courts for seeking relief.<sup>46</sup>

---

<sup>43</sup> Apparel Export Promotion Council, *supra* note 37.

<sup>44</sup> Medha Kotwal Lele & Ors. V. Union of India & Ors., (2013) 1 SCC 312.

<sup>45</sup> *Id.*

<sup>46</sup> NISHITH DESAI ASSOCIATES, *supra* note 29.

Legislative Timeline of POSH Act & POSH Rules	
<b>2007</b>	Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 (" <b>Bill</b> ") approved by the Union Cabinet.
<b>2010</b>	The Bill was introduced in the Lok Sabha.
<b>2012</b>	The Bill was amended and re-introduced in the Lok Sabha.
<b>September 03, 2012</b>	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Lok Sabha
<b>February 26, 2013</b>	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Rajya Sabha.
<b>April 23, 2013</b>	The POSH Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013.
<b>December 09, 2013</b>	The Indian Ministry of Women and Child Development notified December 09, 2013 as the effective date of the POSH Act and the POSH Rules.

Much to our dismay, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) A i.e. the POSH Act was enacted in 2013 that is sixteen years after the Supreme Court issued the guidelines pertaining to workplace sexual harassment in the case of Vishaka v. State of Rajasthan in 1997.

## V. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

With the superseding of the Companies Act, 1956 by the Companies Act, 2013; an essential change was brought about pertaining to the impediment of sexual harassment faced by women at workplaces. India's first ever legislation for prevention, prohibition and redressal of workplace sexual harassment for women was enacted. Along with its rules, this act is collectively referred to as the POSH legislation.

The act extends to the whole of India and seeks to achieve three major objectives<sup>47</sup>:

1. Protection of women against sexual harassment in workplaces
2. Prevention of conduct amounting to sexual harassment in workplaces
3. Establish mechanism for redressal of complaints pertaining to sexual harassment

### (A) Key Provisions

**1. Applicability:** According to the Act, an 'aggrieved woman' in relation to a workplace is any woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment.<sup>48</sup> It is provided that no woman shall be subjected to sexual harassment at any workplace.<sup>49</sup> The act explicitly defines what all acts/behaviors constitute sexual

<sup>47</sup> Trishala Singh, *supra* note 3.

<sup>48</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(a), No. 14, Acts of Parliament, 2013 (India).

<sup>49</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 3(1), No. 14,

harassment<sup>50</sup> and provides a proper definition of a ‘workplace’<sup>51</sup>. The act is applicable to all the workplaces whether owned by Indian or foreign companies having a workplace in India, both organized and unorganized sectors. All public and private sector enterprises, hospitals and nursing homes, sports facilities or any other dwelling places.<sup>52</sup>

**2. Scope:** As per the definition of ‘sexual harassment’ in the Act and the description the circumstances that amount to sexual harassment, it is evident that both direct and implied sexual conduct involving physical, verbal or even written conduct are covered given that the said conduct is unwanted and unwelcome by the recipient woman. There is also a reference to creating an “intimidate, offensive or hostile working environment”<sup>53</sup> and the ambit of what would amount to a hostile work environment is very wide.

**3. Complaints Committee:** As a grievance redressal forum, the act has provided for the constitution of an Internal Complaints Committee<sup>54</sup> at each branch of an organization employing ten or more members and a Local Committee<sup>55</sup> for an establishment having less than 10 employees or if the complaint is against the employer.

### Constitution of the IC

<b>Presiding Officer</b>	<b>Woman employed at a senior level at the workplace from amongst the employees.</b>
<b>Members</b>	Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
<b>External member</b>	From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment. <sup>19</sup>

**Not less than half of the IC Members shall be women**

**The term of the IC Members shall not exceed 3 years**

**A minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry.**

**4. Complaint Mechanism:** At times, if there is a delay in filing the complaint, the IC/LC may extend the timeline for filing the complaint beyond three months if sufficient cause is demonstrated by the woman. Moreover, in such circumstances where the aggrieved woman is

Acts of Parliament, 2013 (India).

<sup>50</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(n), No. 14, Acts of Parliament, 2013 (India).

<sup>51</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(o), No. 14, Acts of Parliament, 2013 (India).

<sup>52</sup> *Id.*

<sup>53</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 3(2), No. 14, Acts of Parliament, 2013 (India).

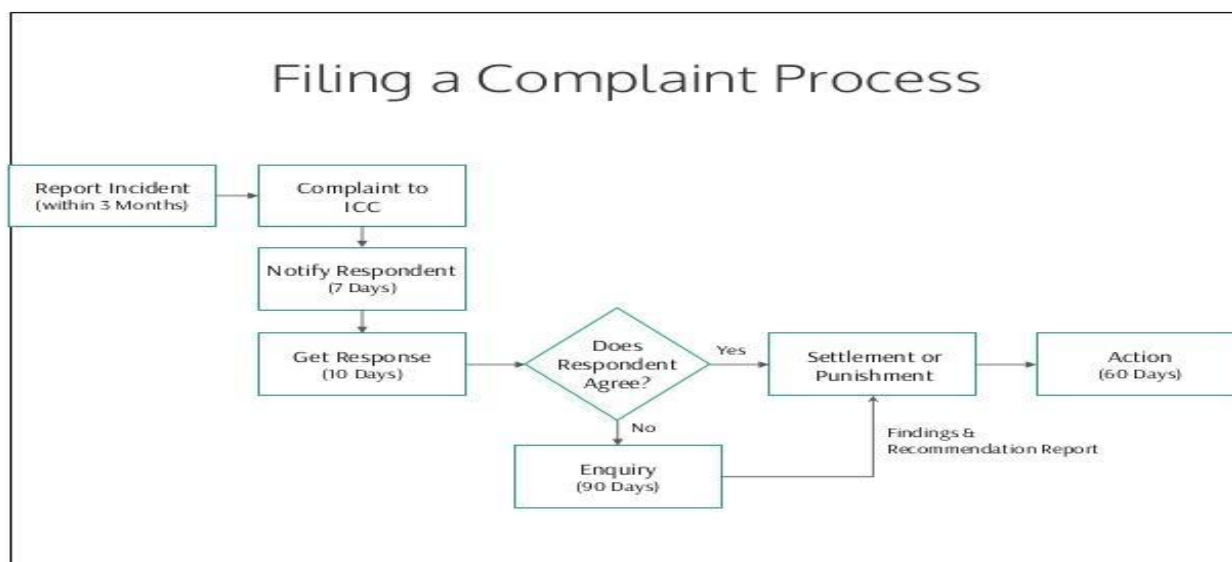
<sup>54</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 4, No. 14, Acts of Parliament, 2013 (India).

<sup>55</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 5, No. 14, Acts of Parliament, 2013 (India).

unable to file a complaint owing to physical/mental incapacity or death; her friends, relatives, co-workers, psychologist & psychiatrists, etc. can also raise a complaint on behalf of her.<sup>56</sup>

**5. Conciliation:** If the aggrieved woman requests the IC to resolve the matter amicably and informally through conciliation between the parties before commencement of the inquiry proceedings, the IC may do so but it should not be based on a monetary settlement.<sup>57</sup>

**6. Redressal Mechanism:** A proper process has been outlined that is to be followed by the aggrieved female employee for filing a complaint and by the IC/LC to complete the procedure of inquiry. Moreover, during the pendency of an inquiry, it may be recommended to the employer to provide interim relief to the aggrieved at her request by adopting measures such as that of her transfer, granting leave etc.<sup>58</sup>



**7. Frivolous Complaints:** It has been provided that a mere absence of adequate proof or inability to substantiate the complaint need not mean that the complaint is false or malicious but in order to prevent misuse, disciplinary action can be taken against “false or malicious” complainants.<sup>59</sup>

**8. Confidentiality:** Information pertaining to the complaints made under the act are not subject to the provisions of the Right to Information Act, 2005 and given the sensitive nature

<sup>56</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 6, No. 14, Acts of Parliament, 2013 (India).

<sup>57</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 10, No. 14, Acts of Parliament, 2013 (India).

<sup>58</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 12, No. 14, Acts of Parliament, 2013 (India).

<sup>59</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 14, No. 14, Acts of Parliament, 2013 (India).

of matters, information is to be kept confidential.<sup>60</sup> Moreover, all the offences under the act are non-cognizable.<sup>61</sup>

**9. Non-compliance:** A failure by the employer to comply with the requirements prescribed would lead to consequences which have been clearly set out. The Act provides a monetary fine of Rs 50,000 to be paid by the employer and in case of continuation of the offence, the punishment can be doubled followed by/along with the revocation of the business license or cancellation of the registration of the entity.<sup>62</sup>

**10. Employer's Duties:** In order to ensure an effective implementation and increased protection to the victim, certain obligations are cast on the employer apart from that of the constitution of the IC: providing a safe working environment, organize workshops and awareness programs at regular intervals to sensitize employees, provide necessary facilities to the Internal Committee, provide assistance to the woman if she decides to lodge a complaint against the accused in relation to the alleged offence under the Indian Penal Code or any other law, etc.<sup>63</sup>

### **(B) Implementation and Loopholes**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was an important legislative step for India since it was the first ever legislation in the country to specifically address the issue of sexual harassment at workplace. The POSH Act not only symbolizes the commitments of India under CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) but also aims at preventing and protecting women against sexual harassment at workplace and ensuring effective redressal of all complaints.<sup>64</sup> Even though the Act applies to both the organized and unorganized sectors, for most women workers in the country, especially the ones in the unorganized sector, the Act exists only on paper. The women working under the unorganized sector are mostly illiterate and, hence, are unaware of the legal provisions established for their redressal. These women can't rebel as they constantly live under a hand to mouth culture. The inefficient working of the Local Committees established for these women workers makes the situation worse.

---

<sup>60</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 16, No. 14, Acts of Parliament, 2013 (India).

<sup>61</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 27, No. 14, Acts of Parliament, 2013 (India).

<sup>62</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 26, No. 14, Acts of Parliament, 2013 (India).

<sup>63</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 19, No. 14, Acts of Parliament, 2013 (India).

<sup>64</sup> Shakti Singh Tevatia & Khalid Khan, *Sexual Harassment of Women at Workplace*, 2 IJLMH 1, 9-10 (2018).



Based on a survey conducted by the Human Rights Watch, which was based on 85 interviews with women workers working in both the formal and informal sectors, it was found that the central and state governments have put limited efforts in implementing the Act thoroughly and in filling the gaps in the system and its mechanism.<sup>65</sup> The government has failed to protect women in both the sectors including millions of domestic workers and even those employed by the government itself to implement various welfare schemes related to health, nutrition, social welfare and education. The women working under these systems are considered part-time workers or volunteers and earn substantially low wages. The 2.6 million *anganwadi* workers who extensively work on early childhood care and nutrition under the government's Integrated Child Development Services, provide preschool education, food, primary health care, and health check-up to children under 6 years of age along with their mothers.<sup>66</sup>

Moreover, it is also important to note that even after eight years since the 2013 Act was enacted, the government has still not published any data or information on the effectiveness and functioning of the Local Committees that are given the responsibility for dealing with complaints regarding sexual harassment in the informal sector. A 2018 study by the Martha Farrell Foundation and Society for Participatory Research, in Asia based on Right to Information, examined 655 districts in the country and found that many of them had failed to establish the Local Committees.<sup>67</sup> It was difficult to find any information on websites or public spaces even regarding the committees which existed on official documents. The lack of awareness about the roles and responsibilities among the members of the committee is one of the major reasons behind the inefficient and ineffective working of these Local Committees.

There's another important category of workers who are constantly at risk of sexual harassment and violence at workplace. They are the domestic workers. For them, the 2013 POSH Act states that the Local Committees have to refer the case to the police, which leaves no room for a civil remedy. This makes most women domestic workers reluctant to complain as it has often been documented by various reputed women centric organizations that women majorly face humiliation and mistrust at police stations when they go to complain of sexual harassment of any form.

The POSH Act provides a comprehensive legislative framework in order to protect and safeguard the interest of women in formal and informal workplaces and simultaneously seeks

---

<sup>65</sup> Harshad Marathe, *No #MeToo for Women Like Us*, HUMAN RIGHTS WATCH (May. 21, 2021, 10:25 PM), <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>.

<sup>66</sup> *Id.*

<sup>67</sup> MARTHA FARRELL FOUNDATION, <https://www.marthafarrellfoundation.org/> (last visited June 1, 2021).

to establish favorable working conditions conducive to the growth and development of women. The Committees established under this Act are considered as quasi-judicial authorities which gives them enormous powers to redress grievances and award punishment for any misconduct provided for by the Act. Even though, India has come a long way since it first recognized sexual harassment as a criminal offence, it has a lot further to go so as to achieve what is so efficiently stated in Section 3(1) of the POSH Act itself as: “No woman shall be subjected to sexual harassment at any workplace”.

## VI. CONCLUSION

*“Women who accuse men, particularly powerful men, of harassment are often confronted with the reality of the men’s sense that they are more important than women, as a group.”*

— *Anita Hill, Speaking Truth to Power*

The POSH Act is not a gender-neutral legislation and it specifically provides a comprehensive legislative framework to protect women against any kind of sexual assault or harassment in their workplaces. Although the safeguards under the act do not apply to male victims, it is upon the employers to choose to extend their policies and make them more gender inclusive. Additionally, even a customer/client who may be harassed sexually at a workplace can claim protection and she doesn’t necessarily have to be an employee. Unlike the Vishaka guidelines which were limited to a traditional office setup, an idea of an extended workplace has been introduced by the act which also includes transportation for commuting to and from the workplace, provided by the employer.<sup>68</sup>The definitions provided in the act have enabled complaints against *quid pro quo* sexual harassment and an environment where if a woman employee is insecure, embarrassed and unable to work efficiently because of unwelcome comments being passed about her body or feels unsafe due to being subjected to undue preferential or humiliating treatment, it could be termed as ‘hostile’. Even though this complaint mechanism makes the process simpler, a subsequent report on Amendments to Criminal Law put forth that an independent employment tribunal dedicated to handling complaints in a more efficient manner would not only be better suited but also be more preferable to a victim.<sup>69</sup>

Women in all sectors and in all forms of employment in the country have reported to constantly being subjected to lewd comments, invasive questions about their sex lives, stalking, and

---

<sup>68</sup> NISHITH DESAI ASSOCIATES, *supra* note 29.

<sup>69</sup> JUSTICE J. S. VERMA, JUSTICE LEILA SETH & GOPAL SUBRAMANIAM, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW 1 (Government of India 2013).

propositions for sexual favors inside their workplaces in exchange for a lighter workload, monetary benefits and time off. It is upsetting to know how so many cases regarding sexual harassment at work place still go unreported. Therefore, even though we have a robust POSH Act in place, it is necessary to fill out the gaps for its effective implementation. We will only be able to bear the fruit of this legislation by properly making the people and the authorities aware of its provisions, by removing ambiguity in the hearing and the standard of proof and by making it gender neutral with insertion of additional provisions for dealing with anonymous complaints. The POSH Act is the right step ahead but it requires polishing and improvisation by law makers and the government.

It has been witnessed for a long time that laws have the ability to provide road maps and beacon the right direction for society to move on. Legislations such as the Dowry Prohibition Act 1961, Prohibition of Child Marriage Act 2006, Child Labor (Prohibition and Regulation) Act 1986 etc. foster a social change. Just as law and society have moved together in the past, they will continue to do so in the future as well. With passage of time, as a child outgrows his clothes so does the society and it invents and reinvents newer and more advanced laws to suit its latest requirements. The magnitude of the issues related to sexual harassment which has started manifesting today at an even greater scale, requires reorientation in our laws which should be simple, facilitating and effective when done with sufficient attention and dedication. Already, sufficient delay had taken place in establishing effective legislation. We, as a society, must make sure that women's interests are protected against the impediment of sexual harassment in workplaces, not just in theory but also in practice.

\*\*\*\*\*