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# Judicial Role in Prevention of Women from Sexual Harassment at Workplace in India: A Legal Analysis

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## ABSTRACT

*Sexual Harassment is a serious threat to healthy working environment. It has been practiced since the advent of waged labour; however, it has only been in recent years that women have had a name of their experiences of it. Sexual Harassment cannot be termed as a new phenomenon but definitely, fast changing workplace equations have brought this dark underground reality to the surface. India is no exception to the same but this issue has become ubiquitous in every part of the world. More or Less, it covers every part of the world within its shackles. Because of the silence surrounding the issue, it is not often discussed, but its presence can be felt in almost every workplace where women have entered. In other words, we can say that no sector remains untouched by this problem. This study analyse the role of Indian Judiciary in prevention of women from sexual harassment work place.*

## I. INTRODUCTION

A judge without judicial activism can perhaps be described as a flower without a colour and fragrance; and a vehicle without fuel and wheels. In protecting the principle of welfare state judiciary, should play an active role as a watching tower and judgements should be society oriented.

The majority of the women are either unaware or ignorant about their rights, which are provided to them by the law. Even if, they are made aware or well versed with the whole scenario, a very few have economic resources and courage to obtain legal redress. No one can ignore the significant role being played by the judiciary in this direction helping her to get what is due to her as a matter of right. It's a great achievement of not only one of the pillars of democracy but the democracy itself that the principle of equality between the sexes enshrined in our constitution is being reinforced and safe guarded through sound judicial process. The judiciary has shown its innate desire to help, this deprived and underprivileged section of the society facing the brunt of this form of sexual violence in silence while giving a whole new dimension

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to justice himself.

### **(A) Pre-Vishaka Scenario**

Prior to Vishaka case, there have been quite a few remarkable judgements that not only brought to fore the existence of this systematic and planned discrimination in our society but also exposed the glaring loopholes in making the safe work places for women.

In *Mrs. Rupan Deol Bajaj & Anr v. Kanwar Pal Singh Gill & Anr*<sup>2</sup>, the victim and the offender (both government officers) were present in at a dinner party in another government officer's residence. In the lawn, ladies and gentlemen were sitting in separate semicircles. The accused (K.P.S. Gill) crossed over to the ladies circle and called the victim, saying he wanted to talk to her over some matter. She went to him and when she was about to sit on a chair the accused drew that chair close to touch his chair. As she pulled the chair back to its place, the chair was again pulled by the accused. Realising that something was wrong, the victim moved away and sat at her original place between the ladies. The accused reached her and stood so close to her that he was only four inches away from her knees. He asked her to get up and come along with him. The victim objected saying, Mr. Gill, how dare you, you are behaving in an obnoxious manner, go away from here. The accused again commanded the victim to get up and accompany him, and blocked her way in such a manner that she could not get up from the chair without touching him. She immediately drew her chair back, got up and tried to leave the place. On this, the accused slapped her on her posterior in full view of all ladies and gentlemen present.

On 20 July 1988, she lodged a complaint alleging commission of offences under Section 341, 342, 354 and 509 Indian Penal Code against the Director General of police of Punjab (KPS Gill) for sexually harassed in a party in full view of her associates. Many of them brushed aside her humiliation by a drunken Gill as a trivial incident. The entire political and bureaucratic establishment threw its weight to protest the police chief and awarded him the Padma Shri when the matter was sub-judice. The said establishment, at the same time, tried to intimidate Bajaj by spreading slander against her and isolating her for daring to protest

An FIR was registered and complaint to the court of the chief judicial magistrate was made. The high court quashed the complaint and FIR. The Supreme Court reversed the judgment of the high court and held that the FIR disclosed an offence under Section 354 Indian Penal Code. One of the arguments, which found favour with high court, was that, in view of Section 95<sup>3</sup> of

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<sup>2</sup> AIR 1996 SC 309.

<sup>3</sup> Section 95 of the Indian Penal Code states: 95. Act causing slight harm. – nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

the Indian Penal Code, the harm caused did not entitle Mrs. Bajaj to complain. Regarding this provision, the Supreme Court observed “viewed in the light of the above principles<sup>4</sup>, we are of the opinion that section 95 of IPC has in no manner application to the allegations made in the FIR. On perusal of the FIR, we have found that Mr. Gill, the top most official of the state police, indecently behaved with Mrs. Bajaj, a senior lady IAS officer, in the presence of gentry and in spite of her raising objections continued with such behaviour. If we are to hold, on the face of such allegations, the ignominy and trauma to which she was subjected to was so slight that Mrs. Bajaj, as a person of ordinary sense and temper, would not complain of it, sagacity will be the first casualty.”

And finally, the hon’ble Supreme Court held that allegation made by Rupan Deol Bajaj, prima facie disclose offences under Section 354 and Section 509 Indian Penal Code, 1860. In this case, the perpetrator was found guilty for repeatedly making inappropriate advances and slapping the complainant on her posterior. The Supreme Court pronounced that the ultimate test for ascertaining whether modesty has been outraged under the Indian Penal Code is whether the action of the offender could be perceived as capable of shocking the senses of decency of woman. The court adopted the many dictionary definitions of the term of modesty which are: (i) womanly propriety of behaviour; scrupulous chastity of thought, speech, and conduct, (ii) decorous in manner and conduct; not forward and lewd; (iii) freedom from coarseness, indelicacy or indecency; regard for propriety in dress, speech or conduct; (iv) reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestion.<sup>5</sup>

Having intention to insult and outraging the modesty of women is an essential element of under section 354 read with section 509 of Indian Penal Code. In all criminal offences, intention has to be proved from the acts of the accused and facts and circumstances of the cases.

In this case the accused was found guilty under Section 354 read with 509 of Indian Penal Code and court directed him to pay 2 lakh rupees as compensation. This was the first instance where judiciary actually took a stand up holding women’s right. There has been no looking back by the judiciary since, then, keeping pace with the changed work culture, mauling progressively, step by step, in its quest to provide safe and projective environment to the women of the society.<sup>6</sup>

In another case, in Sept., 1989, Juli John, a research scholar at the Centre for Advance Studies,

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<sup>4</sup> The court had earlier cited *Veeda Menezes v. Yusuf Khan Hazi Ibrahim Khan*, 1996 (supp) SCR 123. According to the said judgment, whether an act is trivial will depend on the following factors: nature of the injury, the position of the parties and the knowledge and the intention with which the act was done and other related circumstances, it cannot be judged solely by the measure of physical or other injury the act causes.

<sup>5</sup> Indira Jaising, *Sexual Harassment at Workplace 25* ( Universal Law Publishing, 2nd edn. 2014).

<sup>6</sup> Ritu Gupta, *Sexual Harassment at Workplace 46* (Universal Law Publishing, 1st edn. 2014).

University of Madras was assaulted by her supervisor, Dr. N. Raman, in the course of a meeting to discuss her dissertation. —Dissatisfied with the enquiry conducted by the University, she lodged a complaint in the police station in December. The trial court acquitted Raman as the offence was not proved beyond reasonable doubt. When the matter came up in the Supreme Court, nine years later, the Hon'ble Judge was convinced of the genuineness of her complaint and observed that there was ample evidence from the side of supervisor himself in the form of various recommendations etc. to prove Juli's competence.¶

Yet he said though the appreciation of evidence is not proper in this case, since nearly 9 years have elapsed after the occurrence and in the meantime the petitioner got married and settled at Kerala after finishing her studies, I don't think it appropriate to be remanding the matter to the trial court to consider afresh. Under these circumstances, I do not deem it fit to set aside the impugned judgement and to reward the matter, even though the reasoning for acquittal is not correct.

Vulnerability of women students in science faculties is considerably greater than in the humanities and arts as there is a complete dependence of the students on the supervisor. Supervisors are known to indefinitely prolong the period of doctoral research of women students while extracting personal and secretarial services from them. Research guidance is denied to meritorious girl students on the assumption that they will marry and leave. This was good occasion for court to formulate some guidelines. The assumption in this decision is that the passage of time and that the fact that Sexual Harassment did not impede Juli's marriage and settling down, both mitigating and offence that is itself innocuous.<sup>7</sup>

### **(B) Vishaka Case<sup>8</sup>**

In India, there was no statutory definition of sexual harassment till 1997 though there had been quite a few notable judgements earlier that pinned down and brought to fore the existence of this problem. Before 1997, any women facing sexual harassment at workplace had to lodge a complaint under either Section 354 or Section 509 of Indian Penal Code 1860. Moreover, till Vishaka, neither civil nor penal laws in India imposed any obligation on the employees or person in charge of the workplace to protect the female employees from sexual harassment. For the first time in the Indian Judicial history, the court recognised sexual harassment at workplace a recurring phenomenon. The hon'ble Supreme Court took initiative in the above said case to define it in a formal legal manner. The definition of sexual harassment at workplace was closely

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<sup>7</sup> Workshop on Sexual Harassment at Workplace, Organized by Haryana Police; 17 Aug. 2002, pp. 19-20

<sup>8</sup> Vishaka & Ors vs State Of Rajasthan & Ors, AIR 1997 SC 3011.

in *Pari materia* with that of CEDAW.

The historic judgement was outcome of a writ petition filed by certain social activities and NGOs to an incident of brutal gang rape of a government development worker in a village Rajasthan. Bhanwari devi was appointed as a saathin a female village level social worker of a development programme run by the Rajasthan government. This project was started for the empowerment of women. The main aim of the project was to fight against child and multiple marriages in the villages, with the assistance of the local administration. In this area, during the festival of Akhatej, as per the tradition in Rajasthan, thousands of infants and children are married every year. She tried to stop the marriage of infant daughter in Bhatari, her village, as a part of her duty.

The marriage took place nevertheless clandestinely but in this entire exercise what she earned was the ire of the Gujjar family (infant daughter family). As expected, the retribution came quite early in the form of social boycott. The Gujjars, an influential and majority community, resolved not to buy earthen pots from her and refused to sell milk to her. Not only this, she was threatened with dire consequences and harassed mentally as well as physically.<sup>9</sup>

In Sep 1992, five men belonging to an upper caste community who wanted to teach her a lesson for challenging their authority, including Ramkaran Gujjar, gang raped Bhanwari in front of her husband while both were working in their fields.

In this case after the rape, the only male doctor at the primary health centre refused to medically examine her and the doctors at Jaipur only confirmed her age without making any reference to rape in his medical report. At the police station, she was also tortured by the policeman. The policeman asked Bhanwari to leave her lehenga behind as evidence and return to her village. She was left with only her husband's bloodstained dhoti to wear. Apathy of the system crossed all limits when their plea to let them sleep at the police station that night was turned down bluntly. She received no support or help of any sort from her employers, the Rajasthan government or any other corner despite repeated complaints to the authorities. Instead, the district administration along with the police not only tried to cover up but also shifted all burden upon her holding her responsible for the unpleasant experience.

In her quest for justice, she filed a case against the rapists without losing confidence and her faith in the rule of law. It was only under pressure from various women's groups that the accused were arrested. The trial court acquitted the criminals in 1995.

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<sup>9</sup> Ritu Gupta, *Sexual Harassment at Workplace* 47 (Universal Law Publishing 2014).

Down but undeterred, Bhanwari Devi did not lose her heart. When reporters met her to record her struggle, she said, Print my name, I am not a criminal that I should be ashamed. Take my photograph, I have nothing to hide. It's those men who should feel ashamed to come out in broad daylight and have their photographs taken. However, by 1997, 15 years after the incident, the Rajasthan High court held only single hearing of the case and two of the accused were dead.<sup>10</sup>

Her inimitable fighting spirit inspired fellow saathins and women's groups countrywide and they launched a concerted campaign for justice for Bhanwari. By now, there was national outrage regarding this case. Relentless efforts of everyone associated with the movement brought fruit when in the appeal filed before it, the High Court held, it is a case of gang-rape which was committed out of vengeance. It was a serious lapse on the part of the employer (the state government of Rajasthan in this case), the Court pointed out, not to provide safe working environment to the Saathins.

As an immediate and instant response to the judgement of the High Court, the remaining three accused, who had until then been absconding, surrendered before the court.

Several women's groups filed a Public Interest Litigation (PIL) in the Supreme Court, based on which the Vishaka judgment was delivered in 1997. Rest in history, this can be said to be a significant legal victory of women organization heralding a new trend in the country.<sup>11</sup>

The writ petition was filed in the SC with three aims:

- To assist in findings suitable methods for the realization of gender equality.
- To prevent Sexual Harassment at workplace
- To fill the vacuum in the existing legislation.

The Supreme Court observed that, in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places the contents of International Conventions and norms (CEDAW) are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in arts 14, 15, 19 (1) (g) and 21 of the constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit<sup>12</sup> from

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<sup>10</sup> Ritu Gupta, *Sexual Harassment at Workplace* ( Universal Law Publishing 2014) at p.48

<sup>11</sup> *Id.*, at p. 49

<sup>12</sup> *Ethnic Affairs v. Teoh*, 128 ALR 353; *Nilabati Behera v. State of Orissa*, AIR (1993)2 SCC 746.

Article 51 (c) and the enabling power of the parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union list in seventh schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the union shall extend to the matters with respect to which parliament has power to make laws. The executive power of the union is, therefore, available till the parliament enacts legislation to expressly provide measures needed to curb the evil.<sup>13</sup> ||

Thus, the power of the court under Article 32 for enforcement of the fundamental rights and the executive power of the union have to meet the challenge to protect working women from sexual harassment and to make their fundamental rights meaningful. The progress made at each hearing culminated in the formulation of guidelines to which the union of India gave its consent through the learned solicitor general, indicating that these should be the guidelines and norms declared by this court to govern the behaviour of the employers and all others at the work places to curb this social evil.<sup>14</sup>||

The obligation of the court under Article 32 of the Indian Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing statement of principles of the independence of the role of judiciary in the LSEASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

Objectives of the judiciary: the objectives and functions of the judiciary include the following:

- To ensure that all persons are able to live securely under the rule of law;
- To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- To administer the law impartially among persons and between persons and the state.<sup>15</sup>||

The Supreme Court said again the International Conventions and norms are to be read into them (Fundamental Rights) in the absence of enacted domestic laws occupying the field when there is no inconsistency between them. —The High Court of Australia in *Minister for Immigration and Ethnic Affairs v. Teoh.*,<sup>16</sup> has recognised the concept of legitimate expectation of its

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<sup>13</sup> Para no. 7 in the judgment of *Vishaka & others Vs State of Rajasthan & others.*

<sup>14</sup> *Id.*, Para no. 8

<sup>15</sup> Para no. 11 in the judgment of *Vishaka & others Vs State of Rajasthan & others.*

<sup>16</sup> 128 ALR 353.



observance in the absence of a bill of rights in the constitution of Australia. In *Nilabati Behera v. State of Orissa*<sup>17</sup> a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right as public law remedy under Article 32 of the constitution, distinct from the private law remedy in torts. There is no reason why these international conventional and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the constitution of India which embody the basic concept of gender equality in all spheres of human activity.¶¶

The Apex Court in *Vishka's case*<sup>18</sup>, also referred to Article 51 (c), Article 253, Entry 14 of Union list in Seventh Schedule and Article 73, the court also referred to definition of human rights in Section 2 (d) of Protection of Human Rights Act, 1993 and some provision of CEDAW. The Supreme Court taking note of the fact that the present civil and penal laws in India do not adequately provides for specific protection of women from sexual harassment in work places and that enactment of such legislations will take considerable time provided certain guidelines declared under Article 141 of the constitution. So, we see that Supreme Court played the role of guardian of fundamental rights. Rather, it would be appropriate to say that Supreme Court gave a temporary respite to the working women.

Having regard to the definition of human rights in section 2 (d) of the protection of Human Rights Act, 1993. Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time. The court further held that it is necessary and expedient form employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

#### **a. Guidelines and Norms Prescribed in Vishaka Case<sup>19</sup>**

Guidelines and Norms prescribed in this case are as follows:

1. **Duty of the Employer or Other Responsible Persons in Workplaces and other Institutions:** It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

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<sup>17</sup> (1993) 2 SSC 746: (1993) AIR, SCW 2366.

<sup>18</sup> *Vishaka & others Vs State of Rajasthan & others* , AIR 1997 SC 3011.

<sup>19</sup> *Vishaka & others Vs State of Rajasthan & others* , AIR 1997 SC 3011.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as under:
  - a) Physical contact and advances
  - b) A demand or request for sexual favours
  - c) Sexually colour remarks
  - d) Showing pornography
  - e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

When any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

- i. Preventive Steps

All the employers people's in-charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the some steps as under:

- a) Express prohibition of sexual harassment as defined above at the work place should be published, notified and circulated in appropriate ways.
- b) The rules or regulations of government and public sector undertaking bodies relating to conduct and discipline should include rules or regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- c) The private employers be should takes steps to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- d) The appropriate work conditions should be provided in respect of work, health, leisure and hygiene to further make sure that there is no hostile environment towards women at workplaces and no employee women should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

## ii. Criminal Proceedings

Where such conduct amounts to a specific offence under the IPC or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should make sure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

## iii. Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

## iv. Complaint Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, as appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

## v. Complaints Committee

The complaint mechanism referred to in above point, should be adequate to provide, where necessary, complaints committee, a special counsellor or other support service, including the maintenance of confidentiality. The complaints committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such complaints committee should involve a third party either Non Governmental Organisation or other body who is familiar with the issue of sexual harassment. The complaints committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in-charge will also ensure compliance with the aforesaid guidelines including on the reports of the complaints committee to government department.

## vi. Workers Initiative

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in employer and employee meetings.

## vii. Awareness

Awareness of the rights of female employees in this regard should be created in particular by

prominently notifying the guidelines (appropriate legislation when enacted on the subject) in a suitable manner.

viii. Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

ix. Consider Suitable Measure

The Central or State governments are requested to consider adopting suitable measures including legislation to make sure that the guidelines laid down by this order are also observed by the employers in private sector.

x. Guidelines will not Prejudice

These guidelines will not prejudice any rights available under the protection of Human Rights Acts, 1993.

These guidelines were to be observed by the employers or other responsible persons in workplaces or other institutions so as to ensure the protection of women at workplaces, violation thereby, their fundamental rights guaranteed by the constitution. The guidelines were issued under Article 32, so the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplace.

Thus, Apex Court judgement is a landmark for not only recognizing sexual harassment at workplace under Indian jurisprudence as a dehumanizing crime against women workers, but also for having laid down detailed guidelines for prevention and redressal of women victims against the malaise of sexual harassment. In doing so, Supreme Court stepped into the terrain of law making. However caution being the byword, the Supreme Court clarified its intention not to encroach upon the legislative function and clearly spelt out that the guidelines were to be treated as a declaration of law in accordance with Article 141 of the Constitution of India until the enactment of appropriate legislation concerning sexual harassment at workplace.<sup>20</sup>

In compliance with Vishaka Guidelines a new rule was inserted in the Central Civil Service Conduct Rules 1964 prohibiting sexual harassment of working women by government servant and taking of appropriate steps by every government servant in charge of workplace to prevent sexual harassment of any women at such workplace (Rule 3 c). Sexual harassment as a misconduct has been inserted in Schedule 1 and 1A of Industrial Employment (Standing Orders)

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<sup>20</sup> An Article by Kasturi Gakul, *Sexual Harassment of Women at Workplace in India- A legal*

Central Rules 1964 in 1999.

Vishaka is, indeed, unique in many ways. Such judicial articulation paves the path not only by bringing sexual harassment within the framework of human rights but also by shifting the focus of gender violence from a criminal wrong to a discriminatory conduct that violates a woman's basic human rights. The court not only acted as the active guardian of fundamental rights but also provided temporary respite to working women. The guideline extended the responsibility to eliminate discriminatory sexual conduct to a larger society, in this case, the workplace and obligated the employer to ensure a safe and healthy environment for women employees. The main aim of the court, while evolving these guidelines, was to ensure a fair, secure and comfortable work environment to the extent possible, and also, to eliminate situations where the protector could abuse his position and turn predator.<sup>21</sup>

Vishaka's case was a quantum leap in expanding the principle of fairness in procedure after *Maneka Gandhi*<sup>22</sup> where the court, for the first time, has observed that right to equality would also include the right not to be treated in an arbitrary manner. After 1978, probably it was for the first time in 1997, in *Vishaka*, the Principle of fair and just procedure was expanded further to include a gender justice procedure in furtherance of the constitutional goals of equality.

### **(C) Post-Vishaka Scenario**

The drive to fill the existing gaps in the judicial framework gains momentum with every fresh verdict by the Apex Court generating a whole new range of remedial measures under varying circumstances creating thereby, a sense of security in the other aggrieved parties placed similarly. Moreover, strenuous attitude of the court is anti fungal in nature and helps to curb the mushrooming growth of such incidents in future.

The Apex Court went a step ahead and held that, an attempt to molest would amount to sexual harassment. Outrageous behaviour of the employee is sufficient to constitute sexual harassment and actual assault or touch is not necessary to prove it.<sup>23</sup> In this case *AK Chopra*, an Employee of Apparel Export Promotion Council was charged with sexually harassing a woman employee working as a clerk cum typist. The clerk had complained that the accused had tried to physically molest her in the office and also tried to sit too closer to her and advertently. Despite her repeated protests, he continued to repeat his offensive and unwelcome overtures.

The harassed employee complained to her employers about the demeaning behaviour of her

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<sup>21</sup> An Article by Ritu Gupta, *Vishaka and Thereafter: A Critique of the follow Upaction* Delhi Law Review, vol. XXX:2011

<sup>22</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>23</sup> *Apparel Export Promotion Council v. A. K. Chopra*, AIR 1999 SC 625.

superior. Following her complaint, the company suspended the alleged harasser and initiated disciplinary proceedings against him as per the guidelines laid down by the Supreme Court. The Disciplinary committee held him guilty of sexual harassment and removed him from service.¶

The parties aggrieved by the above order, he appealed to the Staff Committee but before it could take any decision, he managed to obtain the unconfirmed minutes of the staff committee, few of which purportedly favoured him on certain grounds. He, then, approached the high court without any delay with prayer that company be directed to implement those minutes. The High Court arrived at a conclusion the accused only made an attempt to molest the clerk without actually doing so and therefore, he could not be removed from the service. Deciding in his favour while allowing the petition, the high court directed the company to implement the decision of the staff committee as per its unconfirmed minutes. The company filed an appeal with the Supreme Court. Criticizing the judgment of the high court, the Supreme Court held that the high court erred while deciding in favour of the alleged harasser and the court should not ordinarily interfere in the findings of the disciplinary proceedings unless: (a) the finding were based on evidence or (b) the finding were legally tenable. In this case, as the findings were based on evidence and were legally tenable, therefore, the High Court should not have interfered.

The Apex Court of India applied the law laid down in Vishaka's case<sup>24</sup> for the first time in this 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 work place on the ground that it violated the fundamental rights guaranteed under article 21 of the constitution of India. The Supreme Court made it clear that sexual harassment is gender discrimination and any act or attempt of molestation by a superior would constitute sexual harassment.

The Supreme Court in this case held that, any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of definition of sexual harassment. Each incident of sexual harassment, at the place of work, results in violation of Fundamental Right to Gender Equality and the Right to Life and Liberty the most two precious Fundamental Rights Guaranteed by the constitution of India. As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment at workplace was a form of gender discrimination against women.

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<sup>24</sup> Vishaka & others Vs State of Rajasthan & others , AIR 1997 SC 3011.

## **II. CONCLUSION**

Indian judiciary had given several landmark judgments which acted as a rule of law in absence of specific statutes. The present Act of 2013 is a landmark step taken by legislators for the protection and security of women at workplaces. We analyse the relevant judicial pronouncements given by Indian Judiciary and after having a thorough analysis of all such, is of the view that this evil of Sexual Harassment is not eradicated only by legislation. The judiciary, which is the important part of government, should also come hand in hand by imparting quick justice to the aggrieved person so that the faith of people is maintained in our judicial system. But huge pendency of cases hinders the judiciary in providing quick and efficient remedies to the victims of the sexual harassment.

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