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Legal Safeguards for Women at Work: An Overview of India's Sexual Harassment Act

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ABSTRACT

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, addresses the serious issue of sexual harassment in Indian workplaces. Previously, women relied on provisions under the Indian Penal Code, such as Sections 354 and 509, which focused on criminal assault and insulting a woman's modesty. Following the landmark Vishaka Judgment in 1997, the Supreme Court defined sexual harassment, guiding the Act's development. Under the Act, sexual harassment includes unwanted conduct of a sexual nature, whether physical, verbal, or non-verbal. It covers behaviors like physical advances, demands for sexual favors, sexually colored remarks, and showing pornography. The Act mandates the establishment of Internal Committees within workplaces to handle complaints confidentially and promptly. This law is a significant step in creating safer workplaces and reflects India's commitment to protecting women's rights in professional settings.

Keywords: *Sexual harassment at workplace, Women's rights, sexual harassment, women's safety.*

I. INTRODUCTION

Sexual harassment is a pervasive and deeply rooted issue that has plagued the societies worldwide. In India, it has been a matter of serious concern, and the development of laws to combat sexual harassment is a testament to the nation's commitment towards addressing this problem. Sexual harassment has existed in India for centuries, but it was only in the latter half of the 20th century that it began to gain legal recognition.² Sexual Harassment is one of the biggest problems our women are facing today in different sectors of life. We rarely pass through a week without a reminder of these kinds of incidents which should be termed as "social problems".

The basis of the act can be derived from an observation that was made in the landmark judgment of *Medha Kotwal lele v. Union of India*³, whereby the Hon'ble judges held as follows:

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² **Union of India v. Dilip Paul, 2023 SCC OnLine SC 1423**

³ (2013) 1 SCC 297

“As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence— domestic violence, sexual assault, sexual harassment at the workplace, etc.—and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population— the women.”

It is a growing problem and all are trying their best to combat this problem by adopting new policies and measures. The definition of sexual harassment varies from person to person and from jurisdiction to jurisdiction. The definition of Sexual Harassment in simple words is “any unwanted or inappropriate sexual attention. It includes touching, looks, comments, or gestures”.⁴

A key part of Sexual Harassment is that it is one sided and unwanted. There is a great difference between Sexual Harassment and Romance and Friendship, since those are mutual feelings of two people. Often Sexual Harassment makes the victim feel guilty, but it is important for the victim to remember that it is not her fault; the fault lies totally on the person who is a harasser. Sexual Harassment affects all women in some form or the other. Lewd remarks, touching, wolf whistles, looks are part of any women’s life, so much so that it is dismissed as normal. Working women are no exception. In fact, working women most commonly face the backlash to women taking new roles, which belong to male domains within patriarchy.

It has also been observed that there are lots of sexual harassment incidents taking place in the workplace, but the victims fear to report the same to the higher officials or the concerned authorities. They fear to file a complaint against such offenders who does such heinous acts. The fear is due to the fear of boss, fear of guilt in the society that they might have to face, fear of being thrown out of the job or being demoted, fear that it will jeopardize their career as in it will put a blot on their resume and would render them un-hirable. Some women have lack of knowledge- they do not know what exactly qualifies a sexual harassment and fail to report the same.

Every country is facing this problem daily. No female worker is safe and the sense of security is lacking in them. There are certain developments in laws of many countries to protect women

⁴ **Vishaka & Ors v. State Of Rajasthan AIR 1997 SUPREME COURT 3011**

workers from Sexual Harassment.⁵

Sexual Harassment is major problem in school, college's universities and institutions, and its percentage is increasing day by day. Surveys on college campus show the number of respondents reporting have been sexually harassed ranging from 40-70 percent.⁶ Only two percent of campus harassment involve a professor demanding sex in return for good grade. Most cases involve male and female students.

II. HISTORY BEHIND THE ACT

(A) Pre-Vishakha Scenario

The catalyst for the change in many ways was the 1990s brutal gang rape at workplace of a Rajasthan state government employee, who tried to prevent child marriage as part of her duties. The feudal patriarchs of the village, enraged by her 'guts' decided to teach her a lesson and raped her. After an extremely traumatic legal battle in the Rajasthan High Court, the rape survivor did not get justice and the rapists, "educated and upper caste affluent men", were allowed to go free. But, the women's rights group called Vishakha did not give up and filed public interest litigation in the Supreme Court of India.⁷

Before 1997, women facing sexual harassment had to lodge a complaint under Section 354 of the Indian Penal Code dealing with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.

(B) Post-Vishakha

In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue.⁸

Many women's rights groups together petitioned the Court highlighting a number of individual

⁵ <http://www.un.org/womenwatch/osagi/pdf/whatishh.pdf> Last accessed (12/11/2023).

⁶ <https://www.rt.com/news/344995-kneset-sexual-harassment-survey/> Last accessed (12/11/2023).

⁷ Vishakha and others v. State of Rajasthan , AIR 1997 SC 3011

⁸ In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution. See Vishakha and others v. State of Rajasthan , AIR 1997 SC 3011.

cases of sexual harassment and arguing that the Vishakha Guidelines were not being effectively implemented. Pursuant to this, the Government of India requested the National Commission for Women (NCW) to draft legislation. Several women's organisations were part of the drafting committee. The bill introduced in the Parliament was known as 'The Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004'. The bill provided for the prevention and redressal of sexual harassment of women at the workplace, or arising during and in the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India.

a. Justice Verma Committee Report

Despite these developments, the problem of sexual harassment assumed alarming proportions and there arose a pressing need for amendments and advancements. And thus, a three-member commission was constituted on December 23, 2012 in "the wake national outrage over the December 16 gang rape of a 23-year-old girl in Delhi".⁹ It was assigned to review laws for sexual crimes and submitted its report to the government. The commission, headed by former Chief Justice of India, Justice JS Verma, with the former Solicitor General, Gopal Subramaniam, and Justice(Retd) Leila Seth identified "failure of governance" as the root cause for sexual crime. It has criticised the government, the police and even the public for its apathy, and has recommended dramatic changes.

b. Scope of the act

The Prevention of Workplace Sexual Harassment Act extends to the 'whole of India' and stipulates that a woman shall not be subjected to sexual harassment at her workplace.⁶ It is pertinent to note that the statute protects only women and is not intended to be a gender neutral legislation. As per the statute, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.¹⁰

Further, the Prevention of Workplace Sexual Harassment Act applies to both the organized and unorganized sectors in India. The statute, inter alia, applies to government bodies, private and public sector organisations, non-governmental organisations, organisations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house.

⁹ Editorial, "Verma panel for stiffer punishment to rapists but no death", *The Tehelka*, April 12, 2014.

¹⁰ Section 3 of the Prevention of Workplace Sexual Harassment Act

III. DEFINITIONS

(A) Sexual harassment

The Prevention of Workplace Sexual Harassment Act defines ‘sexual harassment’ in line with the Supreme Court’s definition in the Vishaka Judgment. As per the statute, ‘sexual harassment’ includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.¹¹

Presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment; threat of detrimental treatment in employment; threat about present or future employment; interference with work or creating an intimidating or offensive or hostile work environment; or humiliating treatment likely to affect the lady employee’s health or safety could also amount to sexual harassment.¹²

Any act against a woman which is impliedly/ explicitly sexual in nature and is unwelcome and occurs at the workplace, shall constitute sexual harassment under the statute. This would include acts such as staring, leering, obscene gestures, howling, kissing, smacking lips, showing sexually obscene/ suggestive signs objects or pictures, indecent comments, dirty jokes, commenting on a woman’s dress or body, using position of power for sexual favours, unwelcome touching, patting, brushing against the body, blocking, using force, assaulting, using unwanted innuendoes, passing sexual comments or telling sexual stories, asking about one’s sexual fantasies, interests etc, showing pornography or any other unwelcome behaviour.

Employee

The definition of an ‘employee’ under the Prevention of Workplace Sexual Harassment Act is fairly wide and covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.¹³

Recognising that sexual harassment of women may not necessarily be limited to the primary place of employment, the Prevention of Workplace Sexual Harassment Act has introduced the

¹¹ Section 2(n) of the Prevention of Workplace Sexual Harassment Act

¹² Section 3(2) of the Prevention of Workplace Sexual Harassment Act

¹³ Section 2(f) of the Prevention of Workplace Sexual Harassment Act

concept of an ‘extended workplace’. As per the statute, ‘workplace’ includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.¹⁴

(B) Internal Complaints Committee

The Prevention of Workplace Sexual Harassment Act requires an employer to set up an ‘internal complaints committee’ (“ICC”) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.¹⁵

B. Constitution of the ICC

Presiding Officer	Woman employed at a senior level at the workplace from amongst the employees.
Members	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.
External member	From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.

Not less than half of the ICC Members shall be women

The term of the ICC Members shall not exceed 3 years

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

it should be noted that in-house management of complaints may act as a deterrent to victims. It is therefore suggested that the complainant need not forcibly file a complaint with the Internal Complaints Committee. A more adequate forum would be an independent employment tribunal to handle complaints in a more efficient manner, which would simultaneously be preferable to a victim. Secondly, the composition of the committee members should have compulsorily been an odd number to enable the committee to reach a majority-based decision. Thirdly, Section 3(c) mandates the appointment of a member from a non-governmental organization (NGO) or association “committed to the cause of women”. There is no threshold for this qualification and it has been left open to interpretation. Further, including third-parties such as NGOs as members of the committee will also raise concerns of confidentiality due to the sensitive nature of such internal matters.¹⁶

¹⁴ Section 2(o) of the Prevention of Workplace Sexual Harassment Act

¹⁵ Section 4 of the Prevention of Workplace Sexual Harassment Act

¹⁶ Justice J. S. Verma, Justice Leila Seth, Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law, January 23, 2013, <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf> (last visited november 11, 2023).

(C) Local Complaints Committee

At the district level, the Government is required to set up a ‘local complaints committee’ (“LCC”) to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.¹⁷

Powers of the ICC/LCC

The Prevention of Workplace Sexual Harassment Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents; and
- iii. any other matter which may be prescribed.¹⁸

(D) Complaint

According to the Act, the aggrieved Women is required to make a written complaint of the same to the ICC or LCC within three months from the date of incident and when there are series of incidence then three months from the last incident. If the woman is unable to make a complaint in writing then proper assistance can be given by the presiding officer or any member of ICC or by the Chairperson or any member of the LCC.

The ICC/ LCC can extend the timeline for filing the complaint, for reasons to be recorded in writing, by a period of 3 months. The law also makes provisions for friends, relatives, co-workers, psychologist, psychiatrists, etc. to file the complaint in situations where the aggrieved employee is unable to make the complaint on account of physical incapacity, mental incapacity or death.

According to the rules of the said act if a woman is unable to make a complaint due to her physical incapacity then the complaint can be made by her friend or her co-worker or any Officer of the National commission for Woman or State Women’s Commission or any person having the knowledge of the incident, with the prior written permission of the aggrieved woman.

¹⁷ Section 5 of the Prevention of Workplace Sexual Harassment Act

¹⁸ Section 11(3) of the Prevention of Workplace Sexual Harassment Act

- Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident. Timeline extendable by another 3 months.
- Upon receipt of the complaint, 1 copy of the complaint is to be sent to the respondent within 7 days.
- Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.
- The Inquiry has to be completed within a total of 90 days from the receipt of the complaint.
- The Inquiry report has to be issued within 10 days from the date of completion of inquiry.
- The employer is required to act on the recommendations of the ICC/LCC within 60 days of receipt of the Inquiry report.
- Appeal against the decision of the committee is allowed within 90 days from the date of recommendations.

(E) Interim Reliefs

The ICC/LCC is also empowered to, at the request of the complainant, recommend to the employer interim measures such as:

- i. transfer of the aggrieved woman or the respondent to any other workplace
- ii. granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement
- iii. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

(F) Punishment and compensation

The statute prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;

- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The statute also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator; and
- v. feasibility of such payment in lump sum or in installments.

In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.¹⁹

(G) Frivolous Complaints

In order to ensure that the protections envisaged under the Prevention of Workplace Sexual Harassment Act are not misused, provisions for action against “false or malicious” complainants have been included in the statute. The statute provides that if the ICC/ LCC concludes that the allegation is false or malicious or the complaint has been made knowing it to be untrue or forged or misleading information has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation can be taken against such complainant. Where the organisation does not have service rules, the statute provides that disciplinary action such as written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service may be taken. The statute further clarifies that the mere inability to substantiate a complaint or provide adequate proof need not mean that the complaint is false or malicious.²⁰

¹⁹ Section 15 of the Prevention of Workplace Sexual Harassment Act

²⁰ Section 14 of the Prevention of Workplace Sexual Harassment Act

(H) Confidentiality

Recognising the sensitivity attached to matters pertaining to sexual harassment, the Prevention of Workplace Sexual Harassment Act attaches significant importance to ensuring that the complaint and connected information are kept confidential. The statute specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005. The statute further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC/LCC and the action taken to the public, press and media in any manner. That said, the statute allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in the identification of the complainant or the witnesses.²¹ Disclosure of the justice secured could not only deter other individuals from engaging in acts of sexual harassment, but also instil in the minds of employees and public that the employer is serious about providing a safe work environment and harbours zero tolerance for any form of sexual harassment at the workplace.²²

Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000.²³

(I) Consequences of Non-Compliance

If an employer fails to constitute an ICC or does not comply with the requirements prescribed under the Prevention of Workplace Sexual Harassment Act, a monetary penalty of up to INR 50,000 may be imposed. A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses. It is however unclear as to which business licenses are being referred to in this case.²⁴ It is also pertinent to note that all offences under Prevention of Workplace Sexual Harassment Act are non-cognizable.²⁵

²¹ Section 16 of the Prevention of Workplace Sexual Harassment Act

²² Shivangi Prasad and Attreyi Mukherjee, Handbook on the law of Sexual Harassment at Workplace 179 (2015)

²³ Section 17 of the Prevention of Workplace Sexual Harassment Act and Rule 12 of the Prevention of Sexual Harassment Rules

²⁴ Section 26 of the Prevention of Workplace Sexual Harassment Act

²⁵ Section 27 of the Prevention of Workplace Sexual Harassment Act

(J) Duties of employer

The Prevention of Workplace Sexual Harassment Act, in addition to requiring an employer to set up an ICC and ensure redressal of grievances of workplace harassment in a time bound manner, casts certain obligations upon the employer to, inter alia,

- i. provide a safe working environment;
- ii. formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace;
- iii. display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the ICC;
- iv. declare the names and contact details of all members of the ICC;
- v. organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the ICC;
- vi. provide necessary facilities to the ICC for dealing with the complaint and conducting an inquiry;
- vii. cause to initiate action, under the Indian Penal Code, 1860 (“**IPC**”) or any other law in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- viii. provide assistance to the aggrieved woman if she so chooses to file a complaint in relation to the offence under the IPC or any other law for the time being in force;
- ix. treat sexual harassment as a misconduct under the service rules and initiate action for misconduct;
- x. prepare an annual report with details on the number of cases filed and their disposal and submit the same to the District Officer;
- xi. monitor the timely submission of reports by the ICC.

IV. CASES AND OBSERVATIONS

Kerala High Court in *L.S Shibu v Air India Limited & others*²⁶ has held that every internal

²⁶ WP(C) No. 4001 of 2016 (A)

complaints committee constituted under the provisions of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 has to follow the principles of natural justice in conducting their enquiry. The petitioner claimed that he had not received a copy of the inquiry report. Air India argued that, since the report established a prima facie case, the petitioner would have the chance to defend himself during subsequent disciplinary proceedings. They viewed the report as a preliminary step, citing an official memorandum supporting this stance. Justice Muhammed Mustaque examined the Sexual Harassment Act, emphasizing that Internal Committees must follow natural justice principles.

He noted that "natural justice" is adaptable and context-dependent. Justice Mustaque explained that the Committee should ensure a safe environment for complainants to speak freely, adjusting procedures if the complainant appears intimidated or unable to withstand direct cross-examination. He concluded that the Committee must provide fair opportunities for the accused to challenge allegations, either through cross-examination or alternative methods, allowing for objections to the complainant's statements. The court thereafter set aside the enquiry report prepared by the internal complaints committee holding the same as not in accordance with the statutory provisions.²⁷

Another Case is commonly known as **National Institute of Mental Health and Neuro Sciences Case (NIMHANS)**²⁸: In this case, psychiatrist John Johnson at NIMHANS, Bangalore, faced accusations of sexual harassment from an MPhil student after advising her to adjust her dupatta during a methodology discussion. He claimed the advice was for her professionalism before interviewing a patient with sexual issues, not harassment. The student, however, alleged it stemmed from his discomfort with her appearance and filed a complaint supported by five other students. Rivalry between two psychiatry units complicated the matter. Although a Vishaka Committee was formed, the student refused to testify, stating only via email that she maintained her initial complaint.

²⁷<http://www.livelaw.in/sexual-harassment-women-work-place-internal-complaint-committee-follow-principles-natural-justice-kerala-hc/> last visited (1/11/2023).

²⁸ Writ Petition No.13707/2008 Kar. H.C.