

# SEXUAL HARASSMENT AT WORKPLACE- LEGAL SAPECT

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**Abstract-** Supreme Court in its Vishaka Judgment has given the guidelines on Sexual Harassment at the workplace. It is a historical case. This case deals with the offence of Sexual Harassment of women at her workplace, defines the ambit of Sexual Harassment, it also including an uninvited or unwelcome sexual favor or sexual gestures from one gender towards the other gender. On the basis of this judgement the PoSH Act has been implemented to prevent and protect women from sexual harassment at the workplace and to ensure a safe working environment for women. Protection of Women from Sexual Harassment Act, 2013 is also known as PoSH Act. The PoSH Policy is one of the important aspects in any organization. There are also other legal provisions in various acts to protect the Sexual Harassment. The expected outcome of this paper is to understand what are the various acts and provisions.

**Index Terms-** Sexual harassment, at work place, Vishaka Judgment, PoSH Act, Indian Constitution, Directive Principles of State Policy, IPC, Industrial Employment (Standing Orders) Act, The SCs & STs (Prevention of Atrocities) Act.

## I. INTRODUCTION - VISHAKA JUDGMENT

In 1992, Bhanwari Devi, a dalit woman employed at rural development programme of the Government of Rajasthan was gang raped on account of her efforts to curb the practice of child marriage. This incident revealed the hazards that working women were exposed and the urgency for safeguards to be implemented in this regard. A PIL was filed in the Supreme Court. Supreme Court acknowledged the glaring legislative inadequacy & acknowledged workplace sexual harassment as a human rights violation. Supreme Court placed reliance by framing the Vishaka Guidelines on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Guidelines issued would have the effect of law & would have to be mandatorily followed by organizations, both in the private and government sector.

## II. GUIDELINES ISSUED BY THE HON. SUPREME COURT UNDER THE VISHAKA JUDGEMENT

Following is the brief of the guidelines issued by the Supreme Court.

**Definition of Sexual Harassment:** The guidelines issued by the Supreme Court widens the meaning and scope of sexual harassment. The definition made it clear and removed the ambiguity on the term sexual harassment. It defines sexual harassment as an unwanted sexual determination which is directly or impliedly intended to cause due to Physical contact or advances or A demand or request for sexual favours or sexually coloured remarks or Showing pornography or any other unwelcome conduct whether it is physical, verbal or non-verbal.

**Provide a safer working environment:** It is the duty of each employer to provide a safe working environment for each and every employee working in the organisation to grow and prosper. This involves taking adequate steps towards protecting the interest of the women employees and ensuring that none of the employees indulges in the practice of sexual harassment. Appropriate disciplinary action must be taken by the employer if any case regarding sexual harassment or ill-treatment of a woman employee is found.

**Duty of the employer to file a complaint:** The guidelines also lay down the obligation of the employer to file a complaint if the conduct towards an employee amounts to a criminal offence which is punishable under the Indian Penal Code. The employer needs to initiate an action and ensure that the witnesses are not further victimised.

**Complaint redressal committee:** The guidelines make it mandatory for all organisations to set up a complaint redressal committee in order to ensure that the complaints of the employees are dealt with properly and suitable action is taken in response to such a complaint.

**Employer to assist the employee if she is sexually harassed:** If the employee is sexually harassed or tortured by a third party, like in the case of Bhanwari Devi, an employer should assist the employee in every possible manner. This was not the case in the Bhanwari Devi case where the employer denied all responsibilities and did not assist Bhanwari Devi in attaining justice. The guidelines provide that the employers are required to assist the employees in terms of both preventive actions and support to these victims.

**Duty of employer to spread awareness:** It is also the duty of the employer to spread awareness in his organisation with regard to the matters pertaining to sexual harassment and the safety of women. This can be done by notifying the employees time as well as conducting workshops and devising other interactive ways to make the female employees aware of their rights.

**Duty of government to widen the scope of these guidelines:** The guidelines also urge the centre and the state government to pass the necessary legislation so as to ensure that the private sector is also bound by these guidelines. This would help in the growth and prosperity of the women as well as the nation as a whole.

The Vishaka guidelines were later on replaced by the Sexual Harassment of women at the workplace (prevention, prohibition and redressal) Act, 2013. The new act passed in 2013 broadens the definition of aggrieved women to involve women of all ages, in order to suit the modern-day conditions. It also broadens the scope of the term workplace which was earlier limited only to the traditional office set-up.

### III. UNITED NATION & INTERNATIONAL LABOUR ORGANIZATION ON SEXUAL HARASSMENT

In 2008-2009 in the Resolutions 1820 and 1888, the United Nations commitment to addressing these issues. Resolution 1820 calls on parties to armed conflict, including non-State actors, to protect civilians from sexual violence, enforce military discipline, uphold command responsibility, and prosecute perpetrators. As early as 1993, at the International Labour Organization seminar held in Manila, it was recognised that sexual harassment of women at work place was a form of 'gender discrimination' against women. The United Kingdom Equality Act, 2010 defines it as "unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them." The United States Equal Employment Opportunity Commission (EEOC) defines workplace sexual harassment as "unwelcome sexual advances, requests for sexual favours, or other conduct of a sexual nature that: explicitly or implicitly are a condition of employment, or are used to make a hiring or other employment decision, or unreasonably interfere with a person's performance or create an intimidating, hostile, or offensive work environment."

### IV. THE PROTECTION OF WOMEN FROM SEXUAL HARASSMENT ACT, 2013

Details about the Progress on Sexual Harassment matter	Year
Vishakha Judgement by SC.	1992
Draft Bill approved by the Union Cabinet.	2007
Bill introduced in the Lok Sabha	2010
The amended Bill - re-introduced in the Lok Sabha.	2012
Bill, 2012 was passed by the Lok Sabha.	September 03, 2012
The Bill, 2012 was passed by the Rajya Sabha.	February 26, 2013
The Act received President's assent. Published in the Gazette of India as Act No. 14 of 2013	April 23, 2013
The Indian Ministry of Women and Child Development notified	December 09, 2013
The effective date of the POSH Act and the POSH Rules.	<b>December 09, 2013</b>

Despite of such an important matter of protecting the women from sexual harassment at work place and the focus given by the Supreme Court in the Vishakha Judgement you can see the journey of the protection of women from sexual harassment is from the Vishakha Judgement to the effective date of PoSH Act, it took 21 long years, from 1992 to 9<sup>th</sup> December, 2013. This is also despite of the international focus of UN & ILO's support to protect the Sexual Harassment Indian political will lacked to bring the legal prospective from 2008 or 1993 respectively.

## V. CONSTITUTION OF INDIA ON SEXUAL HARASSMENT

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...” Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan  
 “The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...” Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan. A s enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution. A safe workplace is therefore a woman’s legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women’s dignity violate the principle of equality of rights. Sexual harassment constitutes a gross violation of women’s right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as ‘natural’ male behaviour or ‘harmless flirtation’ which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India “to practice any profession or to carry out any occupation, trade or business”; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large.

## VI. PROVISIONS UNDER THE INDIAN PENAL CODE (IPC)

The Indian Penal Code which deals with criminal aspects in India has many provisions made by amending the IPC to protect the Sexual Harassment at work place. Let us see these provisions under the IPC one by one:

IPC Section 294: It includes obscene acts in any public place, singing obscene songs to the annoyance of others Punishment will be imprisonment for a term of up to 3 months or fine, or both.

IPC Section 354(A): Demanding sexual favours, showing pornography, physical contact despite indication of disinterest is a crime and accused can be subjected to either jail, ranging from 1 – 3 years or fine or both.

IPC Section 354 (B): It deals with forcing a woman to undress and punishment of jail ranges from 3 – 7 years in prison and a fine.

IPC Section 354 (C). Watching, capturing or sharing images of a women engaging in a private act without her consent is voyeurism and punishable under this section. The man can face jail ranging from 1- 3 years. But if that man is convicted for the second time, then he will face jail between 3 – 7 years along with fine.

IPC Section 354 (D): Following someone with or without their knowledge is known as stalking and considered as an act of sexual harassment. The punishment will be jail term ranging from 3 – 5 years coupled with fine.

IPC Section 375: It includes Acts like penetration of penis in to the vagina, urethra, anus or mouth, or any object into any body part, to apply mouth or touching private parts. Penetration means ‘penetration to any extent’. The punishment will be imprisonment which will not be less than 7 years and it can also be extended to life time. In aggravated situations, punishment may be rigorous, not less than a jail of 10 years, and maybe imprisonment for life.

IPC Section 376A: If a person committing the offence of sexual assault inflicts an injury which causes the death of the person or persistent vegetative state, then he shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, and it shall be extended to life imprisonment. In Gang rapes, persons involved will be punished with rigorous imprisonment of 20 years and not less than that. They shall also have to pay compensation to the victim. The age of consent is 18 years which means any rape below 18 years will be a statutory rape.

IPC Section 499: Morphing Pictures of lady and sharing them with an intention to harass and defame them is punishable by implying jail up to 2 years or fine or both.

IPC Section 503: If a woman refuses to someone’s sexual favours and is met by threats for physical or reputational harm, shall be punished with imprisonment for 2 years or fine, or both.

IPC Section 13 509: Insulting the modesty of a woman by making sexually coloured remarks about her in a public space which intrudes her privacy is punishable by jail of 3 years and fine.

IPC Section 67 of IT Act: Posting any obscene or defamatory material on a public online platform with an intention to harm the reputation or harass that woman is punishable with jail time of 2 years with a fine.

Thus, the IPC has tried to bring in many areas of Sexual Harassment in the Criminal activities and punish the culprit.

**First Information Report (FIR):** An FIR is a written document prepared by a police officer when he receives information about a cognizable offence. FIR must include all relevant details like date, time & place of the incident, identity of the accused, if any.

FIR can be lodged by a witness. The police officer is bound to read out the FIR to you, preferably in your own language & confirm your assent before you sign it. You are entitled to a copy of FIR, free of cost. The FIR must be duly stamped & signed by the Duty Officer.

Police is bound to file a report by a rape victim & listen to her grievances. You cannot be arrested without a lady police officer or constable being present. (CrPC Sec 51 & 100) You can be searched only by a lady police officer / constable. (CrPC Sec 51). Medical examination can be conducted only in presence or supervision of a female doctor. (Sec 54). No arrests after sunset & before sunrise.

Throughout the process your identity can't be revealed (IPC Sec 228A), applicable for rape victims. You can't be called to the police station for interrogation. (CrPC Sec 160(1)). A woman has the right to give her statement to a magistrate in private. (CrPC Sec 164).

#### **VII. THE SCs & STs (PREVENTION OF ATROCITIES) ACT, 1989**

There are two marginalized groups in Indian society: the Dalits, which are legally classified as a Scheduled Caste, and the Tribals, which are legally classified as a Scheduled Tribe. They have been the victims of many atrocities since the beginning of time. It seeks to restore the power of the investigating officer to arrest an accused who is alleged to have committed atrocities against SCs/STs. It rules out any provision for anticipatory bail for the accused. It provides that no preliminary inquiry will be required for registering a criminal case (FIR) and an arrest under this law would not be subject to any approval. This Act came in place to have proactive efforts to enable their participation in a democratic society and also to ensure that this community feels valued members of a society, free from discrimination, violence, and oppression by dominant castes. Addition of new categories of offences to the existing 19 punishable offences. The following new offences were added namely tonsuring of head, moustache, or similar acts which are derogatory to the dignity of Dalits and Adivasis and hurting the modesty of Dalit/Adivasi woman by removing her garments; forcing to leave house, village or residence; defiling objects sacred to SCs and STs; touching a woman or uses words, acts or gestures of a sexual nature against women. The Act also provides special provisions like special courts, atrocity etc. for the offences under this act and takes the matter seriously.

#### **VIII. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946**

This Act is applying to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. Across India the provisions of Standing Orders Act are applicable when 100 and more workmen employed in industrial establishment but in the State of Maharashtra as per the Amendment dated 15.6.1982 the provisions of the Standing Orders are applicable when 50 or more workmen are employed. Thus, the legal provisions to protect sexual harassment at workplace for women employees were made for the working women. The following provisions under the Act / Rules were made after the Vishaka Ruling by the Supreme Court:

10[(1) sexual harassment which includes such un-welcome sexual determined behaviour (whether directly or by implication) as— (i) physical contact and advances; or (ii) demand or request for sexual favours; or (iii) sexually coloured remarks; or (iv) showing pornography; or (v) any other un-welcome physical, verbal or non-verbal conduct of sexual nature.] 11[Provided that where there is a complaint of sexual harassment within the meaning of clause (1) of sub-paragraph (3), the Complaints Committee constituted under sub-paragraph (3B) in each establishment for inquiring into such complaints, shall, notwithstanding anything contained in paragraph 15, be deemed to be the inquiring authority appointed by the employer for the purpose of these rules. (3A) The Complaints Committee shall hold the inquiry, unless separate procedure has been prescribed for the Complaints Committee for holding such inquiry into the complaints of sexual harassment, as far as practicable, in accordance with the procedure laid down in these rules. (3B) The Complaints Committee shall consist of— (a) a Chairperson who shall be a woman; (b) two members representing Non-Government Organisation (NGO) or any other body which is familiar with the issue of sexual harassment or nominees of the National or State Human Rights Commission or the National or State Commission for Women familiar with the issue of sexual harassment, to be nominated by the employer: Provided that one of the two members of the Complaints Committee shall be a woman. (3C) The Complaints Committee shall make and submit every year an annual report, to the appropriate Government, of the complaints and action taken. (3D) The employers or their agents shall report, to the appropriate Government, on the compliance of the guidelines issued by the Central Government in pursuance of the directions of the Supreme Court in Writ Petition (Criminal) Nos. 666-670 of 1992 (Vishaka v. State of Rajasthan and Others) including on the reports of the Complaints Committee.] 12[(4) (a) Where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing, suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension.

#### **IX. IMPORTANT JUDGEMENTS BY HIGH COURTS & SUPREME COURT**

✓ C.B. Muthamma Vs Union of India and others (AIR 1868) - The petitioner was a senior member of the Indian Foreign Service. She filed a case on the grounds that she has been overlooked for promotion because she was a woman and because some rules governing the employment of women in the Service are discriminatory in nature and therefore contrary to Articles 14 and 16 of the Constitution. In 1979 the Supreme Court the 3 judges gave a unanimous judgement in this case since of the rules in question had been or where in the process of deletion, there was no need to address or attack them. In addition, the petitioner had been promoted subsequent to her complaint, so further examination of it was pointless. The court also observed "... sex prejudice against the Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess."

✓ Dr. Punita K. Sodhi Vs Union of India & Ors. in Delhi High Court in 2010 / 2011 – challenges an Office Order dated 17th June 2008, issued by the Lady Hardinge Medical College (LHMC), a hospital functioning under the Directorate General of Health Services (DGHS), Government of India whereby a committee was constituted to enquire into the complaint of sexual harassment made by the Petitioner against Respondent No.6 Dr. K.P.S. Malik. The writ petition also challenges the consequential proceedings of the said Committee including the report submitted by it on the Petitioner's complaint. In the judgement court stated that "it is not clear whether the OM dated 29th July 2010 issued by the MHFW implies that a fresh inquiry will now be held into the Petitioner's

complaint against Dr. Malik by constituting a new committee. In any event, the MHFW will ensure that such committee is constituted strictly in accordance with the Vishaka Guidelines as well as the instructions under the CCS Rules which have been extracted hereinbefore. This should be done within a period of four weeks. A definite outer time limit should be fixed for the conclusion of the enquiry”.

✓ Francis Coralie Mullin Vs Delhi Administration, Union Territory of Delhi: A Profound Interpretation of the Right to Life in Supreme Court on 13 January, 1981- It delves deeply into the heart of the fundamental right to life and personal liberty as enshrined in Article 21 of the Indian Constitution. This case, decided by the Supreme Court in 1981, reshaped and broadened our understanding of the right to life. Francis Coralie Mullin, an overseas citizen, was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA). She was allegedly involved in smuggling activities, and the detention was to prevent her from continuing these activities. Right to Life, More Than Mere Existence: The Supreme Court emphatically stated that the right to life is not about mere animal existence. It extends to the right to live with dignity, free from any cruel, inhumane, or degrading treatment. Breadth of Article 21: The Court gave a broad and expansive interpretation to Article 21. It emphasized that the right to life includes all those facets and aspects that make life meaningful, complete, and worth living. Conditions of Detention: The Court took note of the conditions under which Mullin was detained and observed that these conditions must adhere to the right to a dignified life. Any harsh treatment, which diminishes the value of human dignity, would fall foul of Article 21.

✓ Kharak Singh Vs State of Uttar Pradesh in Supreme Court in 1962 – The majority held that unlawful intrusion into the home violated personal liberty under Article 21 and also opined that the right to privacy was not guaranteed in the Constitution. The minority held that the right to privacy was an essential ingredient of personal liberty under Article 21. The petition under Art. 32 of the Constitution challenges the constitutional validity of Ch. XX of the U. P. Police Regulations and the powers conferred upon police officials by its several provisions on the ground that they violate the right guaranteed to citizens by Arts. 19(1)(d) and 21 of the Constitution. As there was no law on which the same could be justified it must be struck down as unconstitutional, and the petitioner was entitled to a writ of mandamus directing the respondent not to continue domiciliary visits.

✓ Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors. in Calcutta High Court in 2020 dealt with the matter “Does the PoSH Act Allow for Sexual Harassment Complaints Against the Same Gender?” In this case a complaint of sexual harassment was filed against the Petitioner, a female employee of the college, by a private respondent being a female on 15.09.2020. The High Court held that there is nothing in Section 9 of the 2013 Act [which has been referred to in Section 2(m)] to preclude a same-gender complaint under the PoSH Act.

#### X. CLASSIFICATION OF LAWS RELATED TO CRIME AGAINST WOMEN

The laws associated with the crime against women may be classified into following two categories: Crimes against Women under the Special and Local Laws (SLL). The crimes against women provided under the Special and Local Laws aim to obliterate the immoral and sinful practices and exploitation of women in the society. These laws are periodically reviewed and amended in order to bring off promptness with arising needs. Following are some acts comprising of special provisions to protect women and their interests-

- The Immoral Traffic (Prevention) Act, 1956
- The Dowry (Prohibition) Act, 1961
- The Child Marriage Restraint Act, 1929
- The Indecent Representation of Women (Prohibition) Act, 1986
- The Commission of Sati (Prevention) Act, 1987
- Protection of Women from Domestic Violence Act, 2005
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

#### XI. CONCLUSION

Though there was delay in initial days to bring the legislative support to protect the Sexual Harassment at work place. Though the ILO, UN were forcing the nations to bring the legal support for the protection of Sexual Harassment at work place India brought it in December, 2013 through the PoSH Act. One of the important provisions of the PoSH Act is developing the awareness among stakeholders about the sexual harassment and remedies that are available in such cases. That was not the end because Indian Parliament and the Supreme Court played a very important role in understanding and protecting the Sexual Harassment at work place. We have seen this in this article through various legislations like IPC, Standing Orders etc. apart from the basic act PoSH Act.

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