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"CRITICAL ANALYSIS OF SEXUAL HARASSMENT OF WOMEN"

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INTRODUCTION

Sexual harassment at the workplace is a violation of woman's rights to equality, right to dignity and right to a working environment free of sexual harassment under the Constitution of India. Equal rights are protected by "Article 14¹" and 15² and right to life and dignity is protected by Article 21³. Also, Article 19 (1) (g)⁴ states that women has the right to carry out any profession, business and vocations of his/her choice without the annoyance of being harassed.

The Act which was presented as a bill in the Lok Sabha on the 3rd Sep 2012 provides legal framework for workplace harassment. The IPC also elaborates on legal recourses as detailed under Section 354A⁵ which when sexual harassment is regarded as physical contact without a person's consent, or request for sexual favors, or following a man, implying to offer work to, in her service, engaging in a sexually coloured remark, or showing pornographic material to her.

This paper seeks to evaluate the efficiency of the legal system of India especially the IPC and the case laws as well as policies formulated in the workplaces. It incorporates, among others, the cultural issue of; patriarchy and structures of workplace hierarchies that give rise to harassment.. Additionally, the study explores challenges in implementing these laws, such as underreporting and legal loopholes, and evaluates the role of complaint mechanisms like the **Internal Complaints Committee (ICC)**.

¹ INDIA CONST . art. 14.

² INDIA CONST . art. 15.

³ INDIA CONST . art. 21.

⁴ INDIA CONST . art. 19, § 1, cl. g.

⁵ "The Indian Penal Code", 1860, § 354,cl. A, No. 45, Acts of Parliament, 1860 (India).

RESEARCH OBJECTIVES

The next research objectives are in line with the legal framework provided by the “Criminal Law (Amendment) Act, 2013”⁶ whereby mechanisms for handling sexual atrocities against women and strengthening the existing legal system and related support for survivors were realized.

- To analyse the provisions of IPC, particularly Section 354⁷ and the “**Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013**”⁸ in dealing with sexual harassment at workplace.
- To explore the legal implication of decided cases in India and the previous judgements like “**Vishaka v. State of Rajasthan (1997)**”⁹ for work place sexual harassment.
- To examine the role of culture especially males’ dominance over females and other relations that lead to the culture of sexual harassment.
- To measure social perceptions of matters such as victim blaming, stigma and its effects on the reporting of sexual harassment by women.
- To provide suggestions for refining the legal and policy developments that should enhance the position of women and guarantee their fair treatment at the workplaces.

RESEARCH METHODOLOGY

This research employs both doctrinal and secondary research techniques in order to perform a beginning critique of sexual harassment of women at workplace. The doctrinal approach involves the critical analysis of the existing laws, statutes and judicial pronouncement especially the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”¹⁰. The second type of research involves a study of the literature, laws, and cases which would help to understand the dynamic nature of the subject. Semi-conceptual legal research is used to provide an understanding of important judgments and legal ordinances, and important judgment of the topic.

⁶ “The Criminal Law (Amendment) Act”, 2013, No.13, Acts of Parliament, 2013 (India).

⁷ “The Indian Penal Code, 1860”, § 354, No. 45, Acts of Parliament, 1860 (India).

⁸ “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act”, 2013, No.14, Acts of Parliament, 2013 (India).

⁹ Vishaka & Ors vs State Of Rajasthan & Ors, AIR 1997 SC 3011.

¹⁰ *Supra* note 8.

RESEARCH QUESTIONS

The research aims to answer the following questions:

1. The historical growth and advancement of sexual harassment laws in India.
2. Analysing the effectiveness and limitations of current sexual harassment laws through case law interpretations.
3. Identifying key loopholes in existing legal frameworks and discussing the challenges women face in obtaining protection under these laws.
4. Preventive measures and the extent of law enforcement in addressing sexual harassment effectively.

LITERATURE REVIEW

Article: *“Sexual harassment of women at workplace: issue and challenges”*¹¹

AUTHOR: *“Rebecca L. Howard Valdivia”*

The given research also shed light on the way shielding measures in the institutions of the higher learning are much centred to possibly victims and return to such genital myths that are dangerous to survivors, shifting chances to individuals and expectant them to dodge rape. This is a rather limited view that fails to take into account social factors and require more extensive means of prevention concerning potential offenders.

Article: *“Unheard And Uncounted”*¹²

Author: *“Aaron Karp”*

Analysis of violence against women in India shows that there are many flaws in reporting and responding to legal intervention that permit violence against women in India. In 2013, besides, only 33 707 rapes were actually documented and reported while experts suppose that millions of sexual assaults occur and remain unnoticed each year. Several laws such as the Dowry Prohibition Act and Protection of Women from “Domestic Violence Act” was enacted to address gender violence, however the vice continues based on cultural beliefs, attitudes and practices that uphold rape culture. When it comes to the institution’s failure and social prejudices, lower-caste and tribal women feel the brunt to approach legal protection as

¹¹ Rebecca L. Howard Valdivia, *Sexual harassment of women at workplace: issue and challenges*. (Sep. 14, 2024, 11:32 PM) <https://www.epw.in/journal/1991/34/commentary/sexual-harassment-sex-discrimination.html>.

¹² Aaron Karp, *Unheard And Uncounted: Violence against Women in India* , Issue Brief, (2015).

insufficient.

Article: “*Sexual harassment: Section 354 of The Indian Penal Code*”¹³

Author: “*Rakesh Kumar*”

Drawing from the Indian scenario on the existing law on sexual harassment of women especially touching on section 354 of the “Indian penal code”, it is an established fact that it constitutes a serious social vice. Nonetheless, there are laws in place such as Section 354 which deals with use of criminal force with an intention to outrage the modesty of a woman; however there are still cases of under reporting and lack of proper legal machinery to deal with such cases. More than 24,000 cases of sexual harassment were waiting trial in the Indian courts in 2013 and therefore there is the need to make judicial procedures quicker and legal mechanisms more effective. Thus, this assessment offers the basis for exploring the system influences supporting sexual harassment in India a step farther.

Article: “*Indian laws on workplace harassment*”¹⁴

Author: “*K. Padma & Vruddhula Dakshayani & Dr. K. Sitamanikyam*”

The literature also points out to the phenomenon of sexual harassment against the women especially in the work place. This situation occurs even with such provisions as the “Sexual Harassment of Women at Workplace Act, 2013” “the Criminal Law Amendment Act”. Various organizations still have no knowledge on how extensive harassment is and challenges arise for the Internal Complaints Committees especially because they are not well trained and many cases lack strong proof. While #MeToo served as a wake-up call, more in terms of infrastructure and support are thus required to protect women at workplaces.

Article: “*The casual acceptance of sexual harassment at the workplace must end.*”¹⁵

Authors: “*Archita Mohapatra and Preetha Soman alongside with Vikram Shroff*”

“The POSH Act (Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013” “sexual harassment at workplace in India”. There have been provisions made through the court decisions that elucidated some of the essential aspects: defining the sexual harassment, establishing geographical and jurisdictional parameters of workplace, the

¹³ Rakesh Kumar, *Sexual harassment: Section 354 of The Indian Penal Code*, GJRA, (2014).

¹⁴ K. Padma, Vruddhula Dakshayani, Dr. K. Sitamanikyam, *SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: ISSUES AND CHALLENGE*, IJRAR, 391-397, (2023).

¹⁵ Archita Mohapatra and Preetha Soman alongside with Vikram Shroff, *The casual acceptance of sexual harassment at the workplace must end.*

nature and composition of Internal Committees (IC) and employers' liabilities. Judges have supported the necessitation of the IC to alterhive time restraints, award pendencia, and compel attendance. Furthermore, the processes of inquiry should be bias, neutral and should prompt natural justice. Employers are encouraged to assure that employers follow the best practices for compliance to support women's rights because noncompliance results in legal as well as reputational consequences.



CHAPTER-2

2. 1 The evolution and development of laws related to sexual harassment in India.

Sexual harassment is explicitly defined under **Section 354A of the Indian Penal Code (IPC)**.

Constitutional Safeguards Against Sexual Harassment

”Sexual harassment violates several fundamental rights enshrined in the **Indian Constitution**”:

- **“Article 19(1)(g)”**¹⁶ guarantees every woman the right to practice any profession or carry out any occupation, trade, or business. Sexual harassment hampers this right by creating an unsafe and unequal environment.
- **Article 21**¹⁷, which protects the right to life and personal liberty, is also violated as sexual harassment deprives women of their dignity and sense of personal safety.
- Gender equality and equal opportunities, as enshrined in the Constitution, are undermined by sexual harassment, violating the fundamental rights of women and infringing upon their human rights.

Amendments in the Indian Penal Code (Post-Nirbhaya Case)

Following the **Nirbhaya case in 2012**, the **Criminal Law (Amendment) Act, 2013** introduced several new provisions in the IPC to strengthen the laws against sexual harassment and related offenses. The key sections added were:

- **Section 354A**¹⁸ – Sexual harassment, as mentioned above.
- **Section 354B**¹⁹ – Assault or criminal force used to disrobe a woman.
- **Section 354C**²⁰ – Voyeurism, which includes watching or taking pictures of a woman without her consent.
- **Section 354D**²¹ – Stalking, including physical following or using electronic means to monitor a woman without her consent.

“Protection of Women from Sexual Harassment at Workplace Act 2010²² or the popular PoSH Act.”

The PoSH Act, 2013 was a historic legislation which has been formulated with an objective to

¹⁶ *Supra* note 4.

¹⁷ *Supra* note 3.

¹⁸ *Supra* note 5.

¹⁹ The Indian Penal Code, 1860, § 354, cl. B, No. 45, Acts of Parliament, 1860 (India).

²⁰ The Indian Penal Code, 1860, § 354, cl. B, No. 45, Acts of Parliament, 1860 (India).

²¹ The Indian Penal Code, 1860, § 354, cl. B, No. 45, Acts of Parliament, 1860 (India).

²² *Supra* note 8.

address the menace of sexual harassment at the workplace. This Act established its basis from the Vishaka Guidelines which were formed by the supreme court in the case of Vishaka v. State of Rajasthan (1997)²³ after the gruesome gang rape of Bhanwari Devi. These guidelines were later codified into law by the implementation of the PoSH Act.

“Provisions of the PoSH Act”

- **Definition of Sexual Harassment:** The Act has established very clear definition of sexual harassment and has also granted such complaints a strong procedure for addressing them.
- **Internal Complaints Committee (ICC):** The employer is to create an ICC in every workplace if he or she has ten or more employees in the workplace in question. What the ICC has is the power of a civil court and can order a settlement in case this is requested by the complainant.
- **District Officer & Local Complaints Committee (LCC):** The Act has also put into making, the formulation of an LCC for women of the unorganized sectors with aim to protect them from any form of sexual harassment.
- **Penalties:** Measures has been taken that for the non-implementation of the Act the employers may suffer penalties which will help in the implementation of the Act.

Amendments introduced in the PoSH Act

The subsequent judicial pronouncements such as in **Apparel Export Promotion Council v. A. K. Chopra (1999)**²⁴, re-affirmed the Vishaka guidelines in upholding the conviction of a superior who ‘‘tried to molest’’ a female employee. This case also made a stand on the fact that sexual harassment does not only involve touching but also any prohibited indecent act of relations.

Continuation of implementation of the Vishaka judgment was also seen in the **Medha Kotwal Lele v. Union of India (2013)**²⁵, that led to the passing of the PoSH Act, 2013.

Amendments to the PoSH Act (2020)

In **2020**, the PoSH Act was amended to strengthen the existing framework:

- The definition of an ‘‘aggrieved woman’’ was expanded to include transgender persons.

²³ ‘‘Vishaka & Ors vs State Of Rajasthan & Ors, AIR 1997 SC 3011’’.

²⁴ ‘‘Apparel Export Promotion Council vs A.K. Chopra, AIR 1999 SC 625’’.

²⁵ Medha Kotwal Lele v. Union of India, (2013) 1 SCC 311.

- New provisions addressed **online sexual harassment** and **cyberbullying**, recognizing the evolving nature of workspaces and digital communication.
- Penalties for non-compliance were increased, including stricter fines and imprisonment for employers.
- Training of ICC members was mandated, ensuring they are equipped to handle grievances effectively.

Code of Criminal Procedure (CrPC)

Amendments in the CrPC also strengthened the procedural aspects of dealing with sexual harassment:

- **Section 154²⁶ & Section 161²⁷**: Ensure that only female police officers can record statements or conduct investigations in cases involving sexual harassment.
- **Section 164²⁸**: Allows for the recording of a disabled victim's statement at their residence or a place of convenience.
- **Section 273²⁹**: Prevents victims of sexual offenses from facing the accused during cross-examination.
- **Section 357C³⁰**: Mandates hospitals to provide immediate treatment to victims without charge and report the incident to the police.

Indian Evidence Act

The Indian Evidence Act was also amended to shield victims from intrusive questioning regarding their past sexual history:

- **Section 53A³¹**: Disallows the consideration of a victim's previous sexual experiences as evidence in determining character.
- **Section 114A³²**: Presumes "lack of consent in cases of rape" where the victim states that consent was not given, placing the burden of proof on the accused.

Protection of Children from Sexual Offences (POCSO) Act

The POCSO Act provides stringent penalties for sexual offenses against children.

Section 7³³: This section prohibits sexual activity with a child, including penetrative sexual assault and sexual assault by contact.

²⁶ "The Code of Criminal Procedure, 1974, § 161, No. 2, Acts of Parliament", 1974 (India).

²⁷ "The Code of Criminal Procedure, 1974, § 154, No. 2, Acts of Parliament", 1974 (India).

²⁸ "The Code of Criminal Procedure, 1974, § 164, No. 2, Acts of Parliament", 1974 (India).

²⁹ "The Code of Criminal Procedure, 1974, § 273, No. 2, Acts of Parliament", 1974 (India).

³⁰ "The Code of Criminal Procedure, 1974, § 357, No. 2, Acts of Parliament", 1974 (India).

³¹ Indian Evidence Act, 1872, § 53, cl. A, No. 1, Acts of Parliament, 1872 (India).

³² Indian Evidence Act, 1872, § 114, No. 1, Acts of Parliament, 1872 (India).

³³ "Protection of Children from Sexual Offences Act, 2012, § 7, No. 32, Acts of Parliament, 2012 (India)".

Section 8³⁴: This section deals with the sexual assault of a child by a person in authority.

Section 9³⁵: This section prohibits the abetment of sexual assault.

Section 10³⁶: This section deals with the punishment for aggravated sexual assault.

Section 11³⁷: This section prohibits the kidnapping of a child for the purpose of sexual abuse.

2.2 *The Vishaka Judgment (1997): A Landmark in Legal Development*

The ***Vishaka vs. State of Rajasthan and Ors (1997)***³⁸ was based on the subject of a gang rape on Bhanwari Devi, a social activist in the Rajasthan and was punished for the crime of trying to veto a child marriage. Vishaka joined hand with other women organisations for filing PIL to safeguard rights of women in workplace under articles 14,19 & 21 of constitution of India. These articles protect such rights as right to equal protection of the law, “freedom of speech and freedom of one’s choice of occupation together with protection of life and detention of personal liberty.”

However, the Supreme Court Judgment for the first time offered legal strategies for Existing legislative gap and for the Work place sexual harassment. Afterwards, the court articulated the Vishaka Guidelines and gave the government and all the private organizations legally valid instructions until when the law could be enacted. These guidelines placed emphasis on the employer’s responsibility to protect the working women, and required the working out of the right preventive and remedial measures in cases of sexual harassment.

Some of the significant directives included:

- Employers must ensure that no risk to employee’s lives is possible at place of work or business premises.
- New requirement for all establishments to form Internal Complaints Committees (ICCs) wherein at least fifty per cent of the member(s) shall be women.
- Recruitment of third party agents including nongovernmental organizations to complement the efforts.
- Another capability entails the ability of reporting the Criminal and Disciplinary actions against the offenders.

³⁴ “Protection of Children from Sexual Offences Act, 2012, § 8, No. 32, Acts of Parliament, 2012 (India)”.

³⁵ “Protection of Children from Sexual Offences Act, 2012, § 9, No. 32, Acts of Parliament, 2012 (India)”.

³⁶ “Protection of Children from Sexual Offences Act, 2012, § 10, No. 32, Acts of Parliament, 2012 (India)”.

³⁷ “Protection of Children from Sexual Offences Act, 2012, § 11, No. 32, Acts of Parliament, 2012 (India)”.

³⁸ Vishaka & Ors vs State Of Rajasthan & Ors, AIR 1997 SC 3011.

- Creating awareness among the employees, and ensuring that they appreciate their legal positions especially as it pertains to sexual harassment matters.

The guidelines were crucial in establishing the first formal recognition of sexual harassment as an infringement of women's fundamental rights, demanding legal redress.

Vishaka Guidelines, 1997

The Vishaka Guidelines emphasized three key areas: measures for prevention, prohibition and remedy for sexual harassment of the working women. The former functioned as the stop gap law and continued to exist until the formal law was enacted through “the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”.³⁹

- Article 14 (Right to Equality)⁴⁰ – The guidelines helped preserve Women rights in the Workplace by making sure every organization had to treat all employees including women equally without discrimination, and must implement this policy while following anti discrimination policies.
- Article 19⁴¹ (Freedom of Expression and Occupation) – It was a statement in line with this saying that women should be free to work and voice themselves without the menace of harassment.
- “Article 21⁴² (Right to Life and Personal Liberty)” – The guidelines understood the fact that sexual harassment affects the personal liberty and dignity of women thus highlighting the importance of measures that have to be put in place to protect women.

The Vishaka Judgment was not merely a case of providing a short term solution; it paved way for a cohesive legal regime of sexual harassment at the workplace. What was highlighted was the duty of public and private organizations to fight this menace by implementing the Industrial Employment (Standing Orders) Act, 1946⁴³.

Employers were also mandated to ensure that a case of sexual harassment was addressed to the right level and anyone guilty be punished according to the employer’s internal policies or the “provisions of the Indian Penal code”. Measures to protect fairness were also spelled out clearly

³⁹ “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act”, 2013, No.14, Acts of Parliament, 2013 (India).

⁴⁰ INDIA CONST. art. 14.

⁴¹ INDIA CONST. art. 19.

⁴² INDIA CONST. art. 21.

⁴³ Industrial Employment (Standing Orders) Act, 1946, No. 20, Acts of Parliament, 1946 (India).

to involve complaint anonymity, and the Complaints Committee's obligation to report complaints to the government.

Post-Vishaka Developments

The Vishaka Judgment led to several significant legal precedents and reforms:

- **Apparel Export Promotion Council v. A. K. Chopra & Ors**⁴⁴: This was a Supreme Court case which categorized sexual harassment as a violation to the gender equality. It re-affirmed the earlier postured as to where any erg or attempt by a superior to molest was considered as sexual harassment. The case also enriched the concept of work place sexual harassment for IT meant that secondary or even indirect or harmful gestures were also covered under the definition on sexual harassment.
- **Medha Kotwal Lele & Ors v. Union of India & Ors**⁴⁵– For making Vishaka Guidelines that has provision for allowing sexual harassment at workplace, become law in all the states and for the governments was ordered to file affidavits in compliance. It also enhanced the roles of High Courts in event of any violation of the guidelines and expanded more on the areas of the complaints mechanism.

Changes After Vishaka case

The Supreme Court has also attempted to adopt certain measures which have given relatively more bureaucratic openness to the Vishaka Guidelines. One of such reforms was **The Central Civil Services (Classification, Control and Appeal) Rules 1965**⁴⁶ whereby the reports from the Complaints Committees would be treated as the reports of investigation. It also assisted in strengthening the findings of the committees by providing the legal backing to the complaint cases of sexual harassment; this helped to enhance the gravity that used to focus on the complains.

Moreover, the Vishaka Judgment improved the Factor of Educational and Awareness program in a higher level. Since sexual harassment had to be a continuous one and hence; Organizations were prompted to make awareness available by developing handbooks and trainings against workplace harassment.

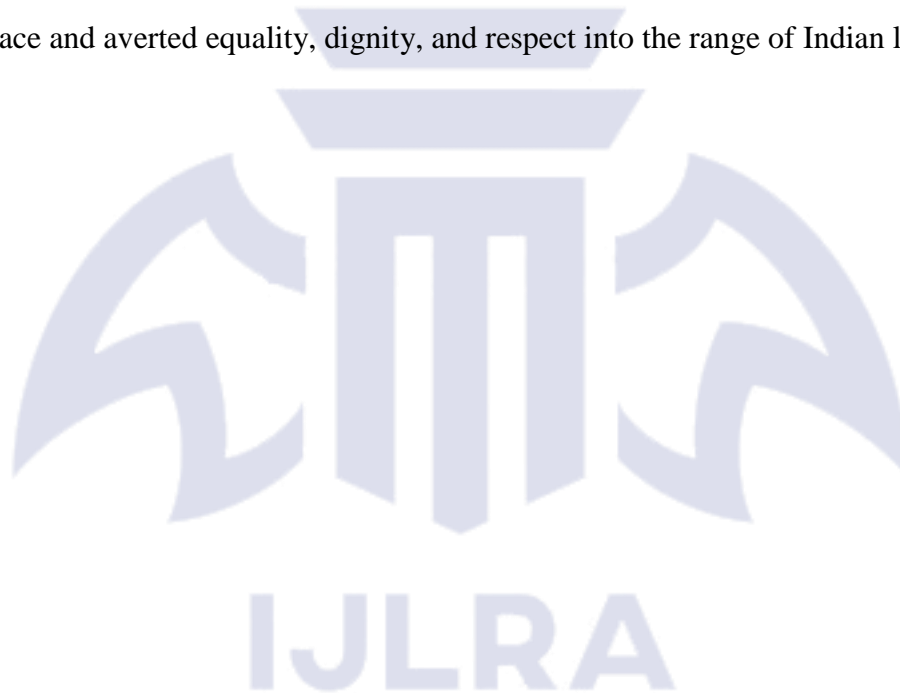
⁴⁴ Apparel Export Promotion Council vs A.K. Chopra, AIR 1999 SC 625.

⁴⁵ "Medha Kotwal Lele v. Union of India, (2013) 1 SCC 311".

⁴⁶ "Central Civil Services (Classification, Control and Appeal) Rules, 1965".

The Vishaka Judgment is known in India as a ground breaking decision especially as it attempts to address working women entitlements. This was the first case that considered sexual harassment at work place holistically and substantively without a enabling law. The guidelines are still learning and meaning fully accepted have had a long-term implication resulting to the enactment of the” Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013⁴⁷ which is more expansive than the Vishaka guidelines.”

Indeed the Vishaka Judgment laid the ground work by way of preventive measures, redressal mechanisms, provisions for gender equality, it therefore still remain a beacon of judicial activism in the fight against workplace harassment. It placed the issues of women’s rights in the workplace and averted equality, dignity, and respect into the range of Indian labour laws.



⁴⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No.14, Acts of Parliament, 2013 (India).

CHAPTER-3

Analysis Of Laws Related To Sexual Harassment With Reference To Case Laws

1. *State of Maharashtra vs. Madhukar Narayan Mardikar (1991)*⁴⁸

This case stated that a women's past sexual behaviour or reputation should not affect her right to seek protection against sexual harassment. A police inspector tried to rape Banubi, a woman of ill-repute. "The original verdict of the Bombay High Court" was on the side of the inspector where the victim was deemed as an incredible witness. Nevertheless, the Supreme Court reversed this decision with words that at no point is a woman's right to privacy and protection from assault negotiable based on her moral standing. This judgment helped to erode the 'character defense,' which the accused perpetrators used to avoid conviction in the sexual assault cases.

2. *Rupan Deol Bajaj v. K.P.S. Gill (1995)*⁴⁹

In this case, the claimant make the allegations that K. P. S. Gill a senior police officer sexually harassed her in the social event by touches her inappropriately. The case pointed out the fact that sexual harassment does not only take place in the workplace but in any setting. The Supreme Court observed that Gill's behaviour came within the definition of criminal misconduct as defined in sections 354 & 509, IPC and the honourable Supreme Court re-affirmed that sexual harassment is not restricted only to the workplace but includes any act of misconduct that debase women.

3. *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University*⁵⁰

This case very much expanded the meaning or interpretation of the term "place of work" in accordance with the POSH Act. 'Workplace' means any place that the employee is assigned duties to be accomplished and therefore extending the protection from sexual harassment of women irrespective of whether the sexual harassment occurs in the physical premises of the employer. This resulted to an expanded protection for women in non-traditional or decentralized work environments.

4. *Girdhar Gopal v State of Madhya Pradesh*⁵¹

The case concern with constitutional petition against section 354 of IPC that prohibits

⁴⁸ State Of Maharashtra And Another vs Madhukar Narayan Mardikar, AIR 1991 SC 207.

⁴⁹ Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr, AIR 1996 SC 309.

⁵⁰ Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University, 2014 SCC OnLine Bom 814.

⁵¹ Girdhar Gopal v. State, 1952 SCC OnLine MP 202.

outraging the modesty of women. According to the petitioner, this was discriminatory to women since it did not apply to men as well. But the “Madhya Pradesh High Court” upheld it pointing out that the law was passed to shield the women from certain harms and therefore does not infringe “articles 14 and 15 of the Constitution.” This case brought into lime light the importance of special laws to protect women since they are vulnerable to the horizon of sexual assaults.

5. **Chaitu Lal v. State of Uttarakhand 2019**⁵²

This case was related to molestation of a woman and the Supreme Court has held that intent and culpability are conditions for conviction under section 354. The Court decided to squash the appeal made by the accused and stated that there was enough evidence to prove that the accused had committed the offense of outrage of the woman’s modesty. The case best depicted how the law sort any act with criminal force or intention to attack the modesty of a woman and this highlighted the judicial approach towards women against unlawful physical overtures.

6. **Vidyadharan V. State of Kerala.**⁵³

In this case, the Kerala high court supported the conviction under the section 354 of the IPC act and underlined the fact that having knowledge that the act would lead to outrage the modesty of a woman is enough to convict the accused. The judgment stated that the elements of criminal force and intent are the major criteria that needs to be considered while proving the guilt under section 354.

7. **Tarkeshwar Sahu Vs State of Bihar 2006.**⁵⁴

This case involved an attempted rape charge whereby the Supreme Court brought down the charge to that of outraging the modesty of a woman under sections 366 and 354. The Court argued that though the accused had the intention of raping her he had not gone to the extent of having sexual intercourse with the complainant. The ruling clarified the provisions of Section 354 to such an extent that any acts that otherwise intend to violating the modesty of a woman whether by touching or in other manners are severe offences even if there is no penetration involved

⁵² Chaitu Lal v. State of Uttarakhand, AIR 2020 SC 219.

⁵³ Vidyadharan v. State of Kerala, 2004 SCC (Cri) 260 12.

⁵⁴ Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560.

CHAPTER 4

Critical Issues and Loopholes in the Legal Framework for Addressing Sexual Harassment of Women in India

1. Defining "Workplace":

- **Film Industry as a Workplace:** In the recent judgement of “Women in Cinema Collective vs State of Kerala (2022)”⁵⁵ the film production units were held as workplaces and thus the formation of Internal Complaints Committees (ICCs) in the film industry was made compulsory. This ruling is important in view of the recent discovery of the MeToo movement where cases of harassment in the entertainment industry are rife. Still, due the broad nature of the legal definitions other such or unconventional, informal types of working scenarios are still not sufficiently covered.

2. Challenges in Reporting and Redressal Mechanisms:

- **Social Stigma and Fear of Retaliation:** Bearing in mind that reporting cases of sexual harassment in workplace often results to shunning of the victims or acts of reprisal. Social stigma prolongs this problem by discouraging those affected by the law to come and report hence diminishing the effectiveness of the law. Most citizens are concerned with losing their jobs or being demoted or having their reputations tarnished, thus self-censoring when reporting.
- **Power Dynamics:** Systems of power reinforcement in the workplaces also make it difficult for the employees to speak against harassment especially if the perpetrator is in a higher authority. This has remained as a great fear that the victims do not report their cases because they are confident that the redressal process will favor the perpetrators.

3. Lack of Awareness and Knowledge of Legal Rights:**Lack of Awareness and Knowledge of Legal Rights:**

- **Limited Awareness:** The victims also may fail to take necessary action or take it at the wrong time and or pursue the right procedure of reporting the case. Besides, because of language or literacy difficulties the marginalized groups are likely to encounter more significant obstacles in seeking legal redress.

⁵⁵ Women In Cinema Collective vs State Of Kerala, 2022 LiveLaw (Ker) 128.

4. Inefficiencies and Delays in Complaint Handling: Redressal mechanisms under the PoSH Act have the following procedural problems which are as follows:

- Delays in Redressal: Another area that most organizations do not have is complaint management and this has ensured that victims of crime are not attended to as required. The extension of the said processes, shortage of skilled workers, and lack of sufficient auxiliary means result in continuation of the complainant's suffering and slowness of the system.
- Ambiguities Regarding "Workplace": Because of flexibility that comes with the work stations the PoSH Act definition as a traditional work place becomes limited as work places move to virtual and other informal forms. There are many cases when a harassment takes place, but not at the workplace of the victim but for example during work meetings or work-related parties which are not clear cut within the letter of the law.

5. Gender-Specific Protection:

The most common complaints that have been received concerning the PoSH Act have been on the line of the gender neutral stance that has been adopted.

6. Challenges in Addressing Anonymous Complaints:

- Procedural Issues: As per the PoSH Act the complaints are to be filed in written format providing movable details of the complainant for the legal troubles. This is especially evident with cases with anonymous complaints which rose during MeToo movement and which complicate the investigative process and make natural justice almost inconceivable.

CHAPTER-5

RECOMMENDATIONS & SUGGESTIONS

Comprehensive Legislation is critical. Laws being currently used such as POSH Act, IPC, and IT act are a patch-work and thus lacks in providing full protection. Therefore, there is need to enact a single law that addresses all the sexual harassment offenses. This law has to be clear and comprehensible and apply to both, the organized and the unorganized sectors in a way to protect all women equally.

It will be noted that women in the unorganized sectors as mentioned earlier are most vulnerable to harassment as they are not protected by the law. This means that there is need to extend the provisions of the POSH Act to protect these vulnerable women. It is for this reason that a specialized framework to address the problems they are facing has to be adopted, with a view of enhancing their safety.

A lot of women do not know their rights and there are many organizations that do not have correct channels for reporting. Massive awareness creating campaigns should be held for both male and female population regarding harassment, legal aspects of the harassment case, and how to file a complaint. The government should also open counseling agencies, and cases should be provided to the victims cost-free.

Organizations should ensure that prevention becomes their top most priority. It is recommended that policies should be kept under constant scrutiny and the message concerning the company's zero-tolerance policy concerning harassment should be relayed by directional-level managers. It will help with the anticipation of implementing the policies and course of actions steadfast that are sexually harassing employees and workers.

CONCLUSION

The critical evaluation of sexual harassment laws in India shows that it has noticed improvement, but there are still some issues. With the progressive change in legal statutes – from the Vishaka Guidelines to the “Sexual Harassment of Women at Workplace (Prevention,

Prohibition and Redressal) Act 2013”⁵⁶ also known as the “PoSH Act” – has built satisfactory legal remedies to tackle sexual harassment with more focus and legislative measures especially in workplace.

Nonetheless, depending on the legal progress that has taken place, there are still problems in the readiness to enforce these provisions and the perception of women in society. The culture of masculinism in various organizations, structuralism in workplaces and the prevalence of power relations between men and women gives room for harassment to prevail. Stigmatisation and sanctions associated with the practice, fear of the perpetrator and bureaucratic procedures of the complaint system reduces the efficiency of these laws as harassment and discrimination are under-reported. Furthermore, the PoSH Act, which is designed for women only, leaves men behind; equally, the lack of clarity regarding workplace harassment in organization’s growth, particularly with reference to newly emerging situations such as work from home leave men behind.

Therefore, there is the need to appreciate the legal reforms needed in order to tackle these issues. It is equally important to extend coverage to those workers who are not organized especially women in sectors not covered by social security schemes as well as men. Besides, legal awareness of rights, improvement in the complaints lodging, and proper timely remedies are also part of that battle

In the end, it is concluded that lack of proper laws, changes in the Indian culture and often ineffective institutions are the main issues which hold the key to absence of powerful legislation against sexual harassment and lack of gender equality in workplaces across India.

⁵⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No.14, Acts of Parliament, 2013 (India).