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SEXUAL HARASSMENT OF WOMEN AT WORKPLACES **WITH REGARDS TO CONSTITUTIONAL PROVISIONS**

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Abstract:

The motive of this article is to depict that gender equality includes protection from sexual harassment and to work with dignity which is universally recognised as a basic human right. The statistical survey gives us view of the estimation of sexual harassment cases. The constitutional provisions relating to sexual harassment with case laws also gives us the idea of safeguarding women against sexual harassment. The sexual harassment of countries like USA, England presents how their laws help to safeguard the working women from sexual harassment. In 1997, the Supreme Court of India issue some norms and guidelines in relation to Vishaka continued to govern till the POSH Act, 2013 passed, incorporating the guidelines issued by the Supreme Court. The case relating to sexual harassment case of CJI, Ranjan Gogoi gives us clear understanding that the sexual harassment cases should follow the principles of natural justice along with Constitutional provisions.

Keywords: Gender Equality, Sexual Harassment, Workplace, Constitutional Provision, Statistical Survey.

Introduction

Humiliation, harassment, torture and exploitation of women is as old as is the history of family life. In India, women are way ahead of women elsewhere in the matter of social legislation but the implementation of laws granting rights to women has been so slow, lopsided and haphazard that socially, economically and politically women lag far behind men. They are discriminated against at work and are denied their due in every field. The indifference and negligence are primarily the result of general acceptance of man's superiority over woman in which violent acts have not been viewed as violent acts.¹

Concept Of Sexual Harassment:

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore of great significance in the formulation of the guidelines to achieve this purpose.”

Vishaka v. State of Rajasthan²

Being a male dominated society, women were often suppressed under them and the offences of crime against women were also increasing. Women in today's generation are well- educated and wanted to be self-independent or economically independent in order to meet their own needs and demands. So, to become economic stability and not to be dependent on their family or household, most of the women preferred to get their own job or work.

As they try to fight economic disparity with men, a new form of crime emerges – Sexual harassment at workplaces. This offence is the most glaring example of human rights violation, gender inequality and injustices. This incident of sexual harassment at the workplaces also results in the violation of fundamental rights under the Constitution, namely the right to gender equality and the right to life and liberty.³

Sexual Harassment is a repulsive crime. Sexual harassment produces an unsafe milieu for women which encroaches their Fundamental Rights as preserved under Article 14, 15 and 21 of the Indian Constitution which provides for equality in status, opportunity and personal liberty.⁴

¹Ram Ahuja, Criminology 215 (Rawat Publication 2020).

²Mamta Rao, Law relating to women and Children 213 (Eastern Book Company 2019).

³*Ibid.*

⁴Samvidhi, <https://www.samvidhi.org/post/sexual-harassment-at-workplace-with-special-reference-to-vishakha-case> (last visited Apr. 26, 2022).

Sexual harassment often causes injuries like anxiety, trauma, depression, decline in work performances and break down of relationships.

What Is Sexual Harassment At Workplaces:

Sexual harassment refers to unwelcome sexual advances or verbal or physical conduct of a sexual nature which has the effect of unreasonably interfering with the individual's work or performance or creating an intimidating, hostile, abusive or offensive working environment.

Section 354 -A of Indian Penal Code of 1860 provides Sexual harassment and punishment for sexual harassment

- 1) A man committing any of the following acts –
 - i) Physically contact and advances involving unwelcome and explicit sexual overtures;
or
 - ii) A demand or request for sexual favours; or
 - iii) Showing pornography against the will of a woman; or
 - iv) Making sexually coloured remarks,

Shall be guilty of the offence of sexual harassment.

- 2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years or with fine or with both.
- 3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.⁵

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines sexual harassment in Section 2 (n) which includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

- i) Physical contact and advances; or
- ii) A demand or request for sexual favours; or
- iii) Making sexually coloured remarks;
- iv) Showing pornography; or
- v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature;⁶

As per the leaflet of the South East Region Women's Group and WASH (Women Against Sexual

⁵Prof. S.N. Misra, Indian Penal Code 702 (20th ed. 2017).

⁶ Vibha Arora, Women Laws 243 (Universal Law Publishing 2017).

Harassment), sexual harassment takes a multitude of forms and includes comments about appearance or body or clothes; leaning and staring at a person's body; abusive, degrading, patronising or belittling remarks or behaviour; sexist remarks or jokes; unwelcome sexual invitations or pressure; promise or threats concerning employment conditions in exchange for sexual favours, display of sexually explicit material; and touching, caressing, hugging, even indecent assault or rape. The first successful claim against sexual harassment at the workplace is *Walker v. Northumberland Country Council*,⁷ where psychiatric damages were awarded by the English Court arising out of occupational stress. In such a case an action may be against an employer for negligence. The judgement in this case is of great importance as it opens yet another area, that is of mental harassment as distinguished from the physical contact theory. It is obvious that the violation of the female body perpetrated by acts of sexual harassment does not have to be at the level of the harm to the physical body. The harm may be caused by a verbal insult and may occur at the mental level.⁸

Sexual Harassment may be defined as sexual misconduct by a supervisor, i.e superior officer, irrespective of the employer's knowledge of any loss or adverse effects for refusing superior's unwelcome advances. As early as 1993, at the International Labour Organisation seminar held at Manila, it was recognised that sexual harassment of women at workplace was a form of "gender discrimination against women". It was further said that sexual Harassment of a woman employee at workplace, amounts to violation of the "right to gender equality" and also right to life and liberty". – the two most precious fundamental rights guaranteed by Articles 19, 14 and 21 of the Constitution.⁹

Statistical Survey OF Sexual Harassment –

In most of the times sexual harassment always happens against women whether it is in workplace, home, road, public places, offices etc.

A survey conducted by the Mode Market Research Agency revealed that 90 million women constitute the organised workforce, besides those working in unorganised sector. Of 335 citizens interviewed in the four major metros – Kolkata, Mumbai, Chennai and Delhi, 63% and 53% respectively felt that discussing sex in the workplace was the most offensive forms of sexual harassment, 49% felt that dirty jokes and putting up "indecent" posters in the office constituted sexual harassment".¹⁰

⁷ Walker v. Northumberland Country Council, 1995 ICR 702: 1995 IRLR 35.

⁸ Mamta, *supra* note 2 at 214.

⁹ K. D. Gaur, Criminal Law 659 (Lexis Nexis, 2019).

¹⁰*Id* at 660.

According to the 2017 BBC surveyed, it is found that 2000 victims of sexual harassment did not file a complaint either in the fear of retaliation or if the harassment was played off as a joke, more than half of all the victims stayed silent.

A report which is released by the U.S. Equal Employment Opportunity Commission (EEOC) in 2020 showed that 55.8% of the complaints received during 2020 are related to retaliation after reporting a sexual harassment incident. Retaliation comes in many forms including a demotion, exclusion from staff activities or unfavourable reassignment.

A survey of Stop Street Harassment in 2018 showed that an alarming 81 percent of women and 43 percent of the women have been harassed in their lifetime.¹¹

Of the 527 people queried across seven cities – Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune – 19% said they have faced some kind of sexual harassment at the office. In a survey it is said that in Bangalore, 51% of the respondents had been sexually harassed while 38 % in Delhi and 28% in Hyderabad.

A survey of 2016 found that 504 women were included in the polling procedure, from which the results turned out as four out of five women faced sexual assault in public places like staring, insult, wolf-whistling etc. In a survey of 2011, it is found that 50% of the sexual harassment occurs in public buses while travelling.

A study of 2020 held that many people are not aware of the various types of harassment. It was found that 38.1 % of the victims and 42.2% of the offenders are aware of the laws relating to sexual assaults. In the words of Kaushik Gupta, Calcutta High Court, advocate “Often men even do not realise what is a violation. For women, it has been so naturalised in their systems that if a man is touching her inappropriately in a bus or a public place, she may normally try to move away a bit without raising her voice. At times there are cases of abuse where the woman has not understood that she has been violated. One of the principal reasons is that as a society, we have very little or almost no understanding of informed, enthusiastic consent.”¹²

Incidents of Sexual Harassment in –

A twenty-four-year-old student of Kolkata was travelling in a crowded metro, where she could feel that a man brushed his genitals against her back which made her uncomfortable. She was afraid to raise her voice as she had often seen girls being asked to get off the train if they had too much problem.

A twenty-eight-year-old lady was waiting in the cloakroom for her luggage, it was late at night, she

¹¹ Inspired e learning, <https://inspiredelearning.com/blog/sexual-harassment-in-the-workplace-statistics/> (Last visited May 1, 2022).

¹² Shrestha Nandy, Increasing Sexual Harassment cases in India: An intimidating reality, iLeaders blog (May 2, 2022, 9:29 PM), <https://blog.ileaders.in/increasing-sexual-harassment-cases-in-india-an-intimidating-reality/>

was reading her book. Another man was sitting in front of her, but she felt an utmost uneasiness as that person was staring constantly which made her uncomfortable. Later on, when she spoke out, that man started to yell at her and said that, because of girls like you, rape cases occur.¹³

Traditional Forms Of Sexual Harassment In Workplaces –

Traditionally, Sexual Harassment is divided into two types in reference to workplaces. They are:

- i) Quid Pro Quo – This form literally means “this for that”. When it is applied to Sexual Harassment it means seeking sexual favours or advances in exchange for work benefits such as promises of promotion, higher pay, academic advancements etc. This kind of sexual harassment mostly holds a woman to ransom as her refusal to comply with a ‘request’ can be met with retaliatory action such as dismissal, demotion, memos, tarnished work record and difficult work conditions.
- ii) Hostile Work Environment – It is a less clear yet more pervasive form of sexual harassment. It commonly involves conditions of work or behaviour towards a female worker, which make it unbearable for her to be there. While the worker is never promised or denied anything in this context, unwelcome sexual harassment occurs simply because she is a woman. Some of the prominent cases are:
 - Derogatory comments of sexual nature or based on gender
 - Presence of sexual visual material or pornographic material such as posters, cartoons, drawings, pictures, computer programmes of sexual nature
 - Telling lies or spreading rumours about person’s personal life
 - Obscene phone calls¹⁴

Sexual Harassment In England

In England, Sexual Harassment is defined as someone who carries out unwanted sexual behaviour towards another person that makes them feel upset, scared, offended or humiliated.

The Equality Act of 2010 says that someone is said to be sexually harassed if they:

- i) Engage in unwanted conduct of a sexual nature

¹³*Ibid.*

¹⁴ Vikaspedia <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/forms-of-sexual-harassment-at-workplace#:~:text=Presence%20of%20sexual%20visual%20material,behavior%2C%20or%20a%20person's> (Last visited: May 7, 2022)

- ii) The conduct has the purpose or effect of either violating the other person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.¹⁵

In England Sexual Harassment is tried under Section 154, of Criminal Justice and Public Order Act, 1994 which has inserted a new Section 4-A into the Public Order Act. It states:

International Harassment, Alarm Or Distress

- 1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he –
 - a) Uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
 - b) Displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

Section 5-A deals with Harassment, alarm or distress

- 1) A person is guilty of an offence if he –
 - a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
 - b) Displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.¹⁶

These provisions were designed primarily to deal with incidents of racial violence and racial harassment. Their utility in dealing with sexual harassment is thereof circumspect. Irene Mackay and Jill Earnshaw argue:

Section 5 was not designed to assist victims of sexual harassment, but to outlaw, in a place other than a dwelling, behaviour which amounts to more than mere annoyance or disturbance. Arguably this section could be used to frame a charge against the perpetrator of sexual harassment, although its use falls outside the spirit of the Public Order Act, 1986 and is at its lowest end of summary offences and so does not reflect the effect which harassment can have on the victim.¹⁷

¹⁵Rape Crisis England and Wales, <https://rapecrisis.org.uk/get-informed/types-of-sexual-violence/what-is-sexual-harassment/> (Last visited: May 7, 2022).

¹⁶ Mamta, *supra* note 1 at 215.

¹⁷ Irene Mackay and Jill Earnshaw, "Striking Around Sexual Harassment" (1995) 145 NEW LJ 340.

Sexual Harassment In USA

According to the U.S. Equal Employment Opportunity Commission (EEOC):

- The Victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex from the harasser.
- The harasser may be the victim's supervisor in another area, a co-worker or a non-employee, such as a vendor or customer.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcomed.

More than 6,500 sexual harassment claims were filed with the EEOC in FY 2020.¹⁸

The definition of the EEOC is the same definition which is adopted by the convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).¹⁹

The United States Supreme Court's rulings in *Burlington Industries Inc v. Ellerth*²⁰ and *Faragher v. City of Boca Raton*,²¹ set at rest the controversy that had grown in 12 years since the justices first ruled that sexual harassment was a form of employment discrimination.²²

The Civil Rights Act of 1964, title VII prohibits sex discrimination in workplaces. The court said:

- a) An employer can be held liable for sexual misconduct by supervisors, whether or not the employer knew about it; and whether or not the employee suffered adverse job consequences for refusing a supervisor's unwelcome advances.
- b) An employer may be liable for both negligent and intentional torts committed by an employee within the scope of his or her employment.

Sexual harassment in educational institutions: Private damages action lies against the school – US Supreme Court – 1999

Davis v. Monroe Country Board of Education,²³ the fact of this case is that the petitioner brought a suit against the Monroe Country Board of Education and other defendants, alleging that her fifth-

¹⁸ NCSL, <https://www.ncsl.org/research/labor-and-employment/sexual-harassment-in-the-workplace.aspx#:~:text=Employers%20must%20promote%20a%20workplace%20free%20of%20sexual%20harassment.&text=such%20advances%2C%20requests%2C%20or%20conduct,or%20sexually%20offensive%20work%20environment> (Last visited: May 9, 2022).

¹⁹ Mamta, *supra* note 2 at 216.

²⁰ *Burlington Industries Inc v. Ellerth*, 524 US 742 (1998): 141 L ED 2d 633.

²¹ *Faragher v. City of Boca Raton*, 524 US 775 (1998): US Lexis 4216.

²² Linda Greenhouse, "Court Spells out of Rules for Finding Sex Harassment", N.Y. Times, June 27, 1998 pg. 1.

²³ *Davis v. Monroe Country Board of Education*, 526 US 629 (1999).

grade daughter had been the victim of sexual harassment by another student in the class. Among petitioner's claims was a claim for monetary and injunctive relief from school officials under Title IX of Education Amendments of 1972. The Title IX provides that no person in the United States shall, on the basis of sex, be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any education programme or activity receiving federal financial assistance.

The petitioner's minor daughter, LaShonda, was allegedly the victim of a prolonged pattern of sexual harassment by one of her fifth-grade classmates. According to the petitioner's complaint, the harassment began in December 1992, when the classmate, GF attempted to touch LaShonda's breasts and genital area and made vulgar statements.

Similar conduct allegedly occurred on or about 4 January and 20 January 1993. LaShonda reported each of these incidents to her mother and her teacher Diane Fort. Petitioner, in turn, also contacted Fort, who allegedly assured petitioner that the school principal, Bill Querry, had been informed the incidents.

The complaint alleged that the board is a recipient of federal funding for purposes of Title DC, that "the persistent sexual advances and harassment by the student GF upon LaShonda interfered with her ability to attend school and perform her studies and activities", and that "the deliberate indifference by the defendants to the unwelcome sexual advances of a student upon LaShonda created an intimidating, hostile, offensive and abusive school environment in violate of Title IX."

Petitioner contends that, notwithstanding these reports, no disciplinary action was taken against the classmate.

The district court dismissed petitioner's Title IX claim on the ground that Title IX provided no basis for liability absent an allegation "that the board or employee of the board had any role in the harassment". "Student-on-Student" or peer, harassment provides no ground for a private cause of action under the statute.

The Court of Appeals for the 11 Circuits, sitting en banc, affirmed the same. Circuit Court Judgement reversed; case remanded for further proceeding consistent with this opinion.²⁴

²⁴ KD Gaur, *supra* note 10 at 667.

Sexual Harassment In India

Workplace sexual harassment in India must be understood in the wider cultural context surrounding all forms of sexual harassment and violence in India. Since the 2012 gang rape and murder of a young woman in Delhi, the issue of sexual harassment and violence has become publicly salient, but crime rates have continued rising and conviction rates remain low. The Vishaka guidelines were the first legal frameworks that recognised protection from sexual harassment in the workplaces as the responsibility of the employers.²⁵

Article 11 of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a party, requires State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at the workplaces.²⁶

The right against sexual harassment is a part of Fundamental right to a dignified life and it takes a lot of courage for a subordinate to overcome the fear to speak up against a lewd superior, the Supreme Court has held in the judgement. A Bench led by Justice D.Y. Chandrachud said that the courts should not be “hyper-technical” while dealing with sexual harassment cases, and be aware of the odds that a survivor has to fight the sexual misconduct. This case involved an appeal filed against the Calcutta High Court decision to quash a sexual harassment proceeding initiated on the complaint of a BSF constable against his superior.²⁷

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act is a transformative legislation which penalises several misconducts of a sexual nature and imposes a mandate on public and private organisations to create adequate mechanisms for redressal. “It is important to note that the courts upheld the spirit of the right against sexual harassment, which is vested in all persons as a part of their right to life and right to dignity under Article 21 of the Constitution”, the apex court underscored.²⁸

²⁵The IWI: International Women’s Initiative, (Last visited: May 9, 2022).

²⁶ Mamta, *supra* note 2 at 216.

²⁷Krishnadas Rajagopal, Supreme Court condemns red tape in sexual harassment cases, The Hindu, (December 04, 11:42 PM), <https://www.thehindu.com/news/national/dont-make-process-a-punishment-for-victims-in-harassment-cases-supreme-court/article37845311.ece>

²⁸*Ibid.*

Vishakha Case:

In the view of the case of *Vishaka v. State of Rajasthan*,

The facts of the case are that Bhanwari Devi was a social worker also known as Saathin under the Women's Development Programme in Bhateri district of Rajasthan which is government run NGO working on a campaign to end child marriage and dowry death. During the course of her employment, she was trying to prevent the child marriage which was happening in a Gujjar family as they were arranging the marriage of a 1-year-old infant.

As she was successful in stopping the child marriage of that infant girl, for this reason the Gujjar family thought of taking revenge against her so the father of the minor girl along with 4 men went her home and gangraped her in front of her husband after attacking him brutally.

Later on, after the incident Bhanwari and her husband went to the police for help. No thorough investigation was launched and police delayed in taking statements regarding what had happened. Before the police told her to return home, she was asked to leave her skirt behind as her evidence. Bhanwari Devi was also forced to seek a medical attention where the doctor only recorded her age-leaving out any reference to rape in his report.

Determined to receive justice for the brutal acts committed against her, The court acquitted all five men but the judges at the same time found it highly improbable that an uncle and his nephews would rape another woman together. They also found it impossible to believe that Bhanwari's husband could have been restrained while watching his wife be raped. Other reasons offered by the court included Bhanwari's delayed report to the police and the lack of medical evidence identifying the men who had raped her.

In response to Bhanwari's story, Vishaka (Group for Women's Education and Research) joined together with four other women's organisation to file a petition to the Supreme Court of India on the issue of sexual harassment at the workplace. The injustice and brutal attack Bhanwari suffered would expose the gravity of sexual harassment in the workplace and the lack of protections women have against it.²⁹

²⁹LSE Centre for Women, Peace + Security, <https://blogs.lse.ac.uk/vaw/landmark-cases/vishaka-v-state-of-rajasthan/> (Last visited: 22 May, 2022).

Constitutional Safeguards Against Sexual Harassment At Workplaces –

The Constitution of India ensures and guarantees every individual the right to practice any profession, or to carry on any occupation, trade or business as enshrined under Article 19 (1) (g). Every woman has a constitutional right to participate in public employment and this right is denied in the process of sexual harassment, which compels her to keep away from such employment.

As it is enshrined in the Preamble of the Constitution, 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 of India. A safe workplace is indeed a women's legal right. So, therefore the constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Constitution of India.³⁰

Apart from Article 32 of the Constitution of India which provides that any aggrieved person can appeal to the Supreme Court in violation of their Fundamental rights, Article 14 deals with equality; Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth; Article 42 which provides for just and humane conditions of work and maternity relief; and Article 51-A (e) of the Constitution which obliges every citizen, inter alia, to renounce practices derogatory to women, are relevant. Article 51 provides for promotion of international peace and security, and Article 253 read along with List I of the Seventh Schedule authorises the appropriate authority to make laws for honouring international commitments. These are the principles of jus cogens, making the international law automatically incorporated in the municipal laws which applies, in the absence of domestic law in the field of sexual harassment.³¹

In the case of *Vishaka v. State of Rajasthan*, that in the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of the international Conventions and norms are significant for purpose of interpretation of the guarantee of gender equality, right to work within human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of the constitutional guarantee. This is implicit in Article 51 (c) and the enabling

³⁰Legal Service India, <https://www.legalserviceindia.com/legal/article-1858-sexual-harassment-at-workplace-is-an-affront-to-women-s-fundamental-rights-sc.html> (Last visited: May 6, 2022).

³¹ Mamta, *supra* note 2 at 217, 218.

power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in 7th Schedule of the Constitution. Article 73 is also relevant as it provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws.³²

J.S. Verma CJ, Sujata Manohar and B.N. Kirpal JJ while delivering the judgement highlighted the fact that: Each and every incident of sexual harassment leads to the violation of fundamental rights of 'Gender Equality' and the 'Right to life and liberty'. It distinctly violates the rights under Article 14, 15, 19 (1) (g) and 21 of the Constitution. Such violations, always forced to take the remedy of Article 32 for the enforcement of the fundamental rights in which any aggrieved woman can approach the court for enforcement of their rights. In order to make effective a writ of mandamus in such kind of situation of class action under Article 32, needs to be accompanied by directions for prevention, as the violation of this fundamental right is a recurring phenomenon.

The progress made at each hearing in Vishaka, culminated in the formulation of guidelines to which the Union of India gave its consent, through the Solicitor General, indicating that these should be the guidelines and norms declared by the supreme Court to govern the behaviour of employers and all others at workplaces to curb this social evil.

According to the court: Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance.

The obligation of this court under Article 32 of the Constitution enforced fundamental rights in the absence of legislation which must be viewed along with role of the judiciary envisaged in the Beijing Statement of Principles of the Independence of Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain independence and effective functioning of judiciary.³³

Objectives of the Judiciary:

- a) To ensure that all persons are able to live securely under the Rule of Law.
- b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights;

³²Dr. S.C. Tripathi & Vibha Arora, Law relating to Women & Children 26(Central Law Publications, 2019).

³³NCWApps.nic, [http://ncwapps.nic.in/pdfReports/Sexual%20Harassment%20at%20Workplace%20\(English\).pdf](http://ncwapps.nic.in/pdfReports/Sexual%20Harassment%20at%20Workplace%20(English).pdf) (Last visited: May 15, 2022).

- c) To administer the law impartially among persons and between persons and the state.³⁴

After taking into considerations of the facts and circumstances of the case, the Supreme Court has laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work until a legislation is enacted for this purpose. The petition was filed by a social worker by way of Public Interest Litigation for the enforcement of rights of working women under Articles 14, 19 and 21 of the constitution and in finding suitable methods for realisation of the true concept of 'gender equality'.

Vishakha Guidelines:

The Court has laid down the following guidelines: -

- 1) All employers or persons in charge of workplaces in the public and private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation he should take the following steps; -
 - a) Express prohibition of sexual harassment, which include physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
 - b) The rule and regulation of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties against the offender.
 - c) As regard to private employees, the above prohibitions should be included in the Standing Order under the Indian Employment (Standing Orders) Act, 1946.
 - d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplace and no employee women should have reasonable ground to believe that she is disadvantaged in connection with her employment.
- 2) Where such conduct amounts to specific offences, under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law making a complaint with appropriate authority.

³⁴*Ibid.*

- 3) The victims of sexual harassment should have option to seek transfer of the perpetrator or their own transfer.³⁵

In *Nilabati Behera v. State of Orissa*,³⁶ ICCPR provisions also referred to support the view that ‘an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right’, as a public law remedy under Article 32’, distinct from the private law remedy in torts. Similarly, in *Mohd. Ahmed Khan v. Shah Bano Begum*,³⁷ the absence of enacted law also provides the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse particularly in sexual harassment at workplaces, laid down guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done with 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.³⁸

Position After Vishaka Judgement:

Before the POSH Act was passed, the guidelines and norms issued by the court would be binding strictly in all workplaces for preservation and enforcement of the rights of working woman. This was witnessed for the first time in *Apparel Export Promotion Council v. A.K. Chopra*,³⁹ the Supreme Court restated the law that was dictated in the Vishakha Judgement.

But in *Medha Kotwal Lele v. Union of India*,⁴⁰ the Vishakha guidelines were of less effective as sexual harassment against women continue to take place. Implementation has to be not only in form but substance and spirit so as to make a safe and a secure environment for women at workplaces and enabling them to work with dignity, decency and due respect.

The guidelines and norms which is issued by the Supreme Court in Vishakha case was not effective in an efficient manner in Sexual harassment of women cases. So, the Govt. of India and the Ministry of Labour and Employment (MOLE) has decided to make an act which can eradicate the issue of Sexual harassment cases against women in India and to provide gender equality at the workplaces. So, the Sexual Harassment of Women at Workplaces (Prevention, Prohibition and Redressal) Act was passed which incorporates the guidelines issued by the Supreme Court. The Act got the assent of the President on 22 April, 2013 and came into force on 9 December, 2013. This

³⁵ Dr. J.N. Pandey, Constitutional Law of India, 112 (Central Law Agency, 54th Ed.).

³⁶ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; 1993 SCC (Cri) 527.

³⁷ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556; 1985 SCC (Cri) 245.

³⁸ Supreme Court of India, <https://main.sci.gov.in/jonew/judis/13856.pdf>. (Last visited: May 24, 2022).

³⁹ Apparel Export Promotion Council v. A.K. Chopra, (1991) 1 SCC 759.

⁴⁰ Medha Kotwal Lele v. Union of India, (2013) 1 SCC 297; (2013) 1 SCC (Cri) 459.

Act comprised of total 8 chapters which says about definitions, procedures of filing complaint, composition of internal or local complaints committee.

In the recent case of *Re Matter of Great Public Importance touching upon the Independence of Judiciary* (also known as Sexual Harassment Case of CJI), the CJI was accused of sexual harassment on April 19, 2019 against a former junior court officer. She submitted the documents sustaining of her claims and wrote a letter to 22 other Supreme court Justices. The next day, the CJI Ranjan Gogoi called a special hearing denied all the allegations he was charged with. The Central issues that have been arose immediately are:

- i) Whether the allegations were true?
- ii) Whether the Chief Justice had mishandled the matter by using the powers of his office to defend himself against the allegations.

The Supreme Court lawyers raised their voice by urging that CJI violated the Principles of Natural Justice by hearing his own case. Later on, the women in Criminal Law Association (WCLA) demanded a fair inquiry into the allegations which stated an inquiry should be done as per the procedures established by law and principles of fairness and justice including the Fundamental Rights of Equality before Law (Article 14). The CJI later on accepted his mistakes in his autobiography “Justices for the Judge”.

Conclusion

This article helps us to arrive at a conclusion that how the Constitutional provisions deals with sexual harassment cases and the interlinked of these articles to give protection to the women against sexual harassment. Now, with the development of new technology and making India into digitally developed and in order to make the POSH Act effective enough, the Union Minister for Women and Child Development launched 'she-box' which is an online portal whereby any working women in govt. or private institutions can lodge complaint of Sexual Harassment instantly at the blink of touch.

In the year 2017 and 2018 the #MeToo movement in India started which highlights the facts about the problems of victims which have been faced while seeking justice or lodging complain of harassment by powerful man in the workplace. Recently, in the Sexual Harassment case of CJI, that the woman should be given fair and equitable rights of participation in the inquiry proceedings and should be appear before the committee with the counsel of her choice. All the judgement delivered by court regarding sexual harassment cases should be accompanied by principles of natural just and with equality before law as highlighted in the case of CJI sexual harassment case.