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WOMEN AS VICTIMS OF WORKPLACE ABUSE – AN ANALYSIS

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Abstract

Sexual harassment at workplace is a serious issue around the globe, irrespective of whether it is a developed, developing or an under-developed nation. Where the women workers are travelling in a crowded local transport for the purpose of reaching the work place or to sitting in a cubic room at workplace they face sexual assault either knowingly or unknowingly in one or other way. Though multiple legislations, rules, regulations and policies have been enacted it served to be insufficient to deal with such sexual exploitations due to situational cause. This research paper focuses on exposing the existence of such workplace abuse for women for almost a millennium, until now. It also throws light on the kinds of workplace harassment faced by women, the various legislations enacted in that regard and its level of effectiveness in curtailing this issue. In present scenario the impact of the sexual assault is much prone that it's no longer just harassment or sexual exploitations but what it is called as today is "Sexual Terrorism". This paper, thus highlights the probable preventive and prohibitive measures to curtail such workplace sexual so called terrorism and thus protect women workers' rights.

Key Words: Fundamental Rights, Workplace abuse, Sexual harassment, unpleasant behavior

I – Introduction

In recent times the world talks much about women empowerment and women being on equal footing with men. Even in the Indian Constitution, Article 15 provides for power to make special laws for women¹ nothing has been changed socially, economically and politically, in which their status has not been changed on par with their male counterparts and their security and peaceful working environment still remains in doldrums. One needs to date back to 1860 to understand the fact that women have been engaged in laborious tasks since then, contradictory to the general misconception that women, from time immemorial have been working for their families in farms, as house-help or as baby sitters in recent times women have set their foot at work alongside their male counterparts. The Factories Act 1881, an outcome of labour agitation and the first labour commission in India is probably the best example to cite the same. The Act created disappointment and lost its charm only because it had no provisions to regulate the working conditions of women and children² and thereupon another Factories Commission was constituted in 1884 to rectify the same. On an international perspective, the close of Industrial revolution phase II dating from 1860 till 1914, came in line with the First World War which forced the industrial workers to fight for their nation and it thus claimed the lives of many men who were sole bread-winners of the family, forcing their wives/women in the families and their children to come out and work in factories. From then on women have been exposed to various kinds of abuses at workplace and have also been overlooked by legislations which were meant to protect their rights. From 1860 to 2013 there was no statutory remedy that directly addressed sexual harassment at workplace except the Indian Penal Code, which punishes an act caused to outrage the modesty of women³. Despite various barricades women have left no field untouched, starting from police, army, politics, MNC's, to sports. The Indian Parliament woke up from its slumber only in 2013 when the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and rules thereof was enacted and it is followed by the Criminal law (Amendment) Act of 2013 wherein the term 'Rape' under IPC and Cr.P.C., was broadened and it was laid down that 'sexual harassment' was not just a compliance issue but it widespread than 'just compliance', non-adherence or inappropriate handling of which may lead to

¹ Indian Constitution Article 15(3) provides that the state may not prevent itself from making laws that provide special provisions for women and children

² S C Srivastava, Industrial Relations and Labour laws 58 (vikas publishing house pvt.ltd. 2018)

³ Indian Penal Code, 1860, Sec.354; Act No.45 of 1860 (India)

disrepute of an organization⁴. Moreover, many cases, prior and post such enactments have taken place, yet there lingers some ambiguity or lacuna in the law.

II – Workplace, Workplace Sexual Abuse and its forms

Workplace - is defined as “any place visited by the employee, arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey⁵. The definition extends cover to both organized and unorganized sector, whether having place of work in India or abroad. Moreover the phrase ‘arising out of and in the course of employment’⁶ is used in the Workmen’s compensation Act, 1923 to refer to the employers’ liability to compensate the employee and it implies that workplace is not merely restricted to offices or companies but its ambit extends wider to include all forms of work atmosphere from including industries, government organizations, govt. companies, corporations, cooperative societies, hospitals, private sector enterprises, trust, NGO, and other services etc, within its purview and with regard to unorganized sector it covers individual enterprise owners or any enterprise with less than 10 workers, so as to ensure that the cover of legislations extends to all category of work enclosures.

Workplace abuse- can be defined as the belittling or threatening behaviour directed at an individual/ group of workers which may cause emotional or physical harm. It can be broadly classified into various categories viz.,

- i) Discriminatory Harassment – wherein the employee/ worker get abused on the basis of race, sex, caste, religion, gender or even standard of life.
- ii) Personal Harassment – includes inappropriate/ harsh comments or offensive jokes leading to personal humiliation is one kind of intimidating tactics.
- iii) Power Harassment – is where the workers/ employees are burdened with unachievable targets, forcing them to do something outside the scope of the job etc.
- iv) Psychological harassment – A hostile working environment which includes isolating or trivializing

⁴ Rajesh Arora, “Prevention of Sexual Harassment of Women at workplace: Need for changes in policy”, page 554, Chartered Secretary (ICSI), (2014)

⁵ Handbook on Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Government of India (Ministry of Women and Child Development) 8, (2014)

⁶ Workmen’s Compensation Act, 1923, s.3, No. 8, Acts of Parliament, 1923 (India).

the victims' ideologies, spreading rumours and gas lighting victims.

- v) Physical or Sexual Harassment—The most common kind of harassment meted out to women, includes direct threats to inflict harms, inappropriate behaviour or handling and causing physical attack, thereby outraging the modesty of women.

Despite being the most prominent form of workplace abuse, it has always been hard to interpretas it involves a wide range of behaviours where at times even the victim finds it difficult to explain or share their experiences. International instruments define sexual harassment as “violence against women and discriminatory treatment”⁷. It is pertinent to note that this violence need not necessarily be bymen alone but can also be by someone of the same gender or a neutral gender.

Reddresses sexual harassment as a serious manifestation of sex discrimination and a violation of Human Rights and includes two key elements –quid pro quo (physical, verbal or non-verbal conduct of sexual nature affecting the dignity of women and a person’s rejection of or submission to such conduct being used as a basis to affect his job)and hostile working environment (conduct that creates a humiliating work environment for the recipient)⁸

The **Hon’ble Supreme Court of India** defined **Sexual Harassment** to include unwelcome sexually determined behaviour (whether directly or indirectly) as any physical touch or conduct, any unpleasant taunt or misbehaviour, showing of pornography and asking for any kind of sexual favours.⁹

Moreover court held that any International Convention which is not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into the provision of Part III of the Constitution so as to promote constitutional guarantee and since there is no law relatingto Sexual Harassment at workplace, court relied on the Convention on Elimination of All Forms of Discrimination against Women (CEDAW - signed by India in 1980 and ratified in 1993) in interpreting Art. 14, 19 and 21 of the Constitution.¹⁰

Although the Vishaka case came in 1997, a proper definition for sexual harassment was laid down

⁷ Nikunj Keyal, Sexual Harassment of women at workplace, LEGAL SERVICES INDIA (Feb. 14, 2023, 21:19pm), <https://www.legalservicesindia.com/article/2114/Sexual-Harassment-of-Women-at-Workplace.html>

⁸ International Labour Organization Discrimination (Employment and Occupation) Convention1958 (No.111), ratified by India in 1960

⁹ Vishaka Singh v. State of Rajasthan, (1997) 6 SCC 241

¹⁰ Ibid., Note.9

only by the Criminal Law (Amendment) Act, 2013, wherein s.354A of IPC was inserted to define sexual harassment in a fashion very similar to that of Vishaka case including physical contact and unwelcome sexual overtures, demand of sexual favour, showing pornography against the will of a woman and making sexually coloured remarks. The international definition is broader when compared to the national laws as national laws focuses more on illegal conduct rather than an unwelcome sexual conduct which creates a hostile or offensive work environment. However, the following do not fall under the category of sexual harassment viz., Performance counselling, social interaction, personal encouragement, mark of concern, polite/friendly remarks/ conversations/ compliments.

III - Vishaka Case an outlook

The term Sexual Harassment got a definite form only after this case where it was proved that the Independence of Judiciary is the crown jewel of our Constitution. The instant case is a milestone under the banner of judicial activism wherein the Hon'ble Supreme Court laid down guidelines to combat sexual harassment against women at workplace. It is also the first case where international covenants were applied to municipal and district level courts directly.

The case revolves around Banwari Devi, a social worker, who was raped by an influential man named Ramakant Gujjar along with 5 of his men in front of her husband, in revenge for having stopped a child marriage in the Gujjar Family. The Trial Court and High Court went on to acquit the accused for lack of evidence but the Supreme Court rose to the occasion and came up with elaborate guidelines to deal with the issues.

The Hon'ble Court held that sexual harassment leads to gross violation of fundamental rights as provided under Art. 14, 19 and 21 of the Indian Constitution and for the first time gave a solid definition for sexual harassment.¹⁴ The Court then laid down that it shall be the duty of the employer or other responsible person at workplace to inform, produce and deal with the matter in the appropriate manner which shall include criminal proceedings under any appropriate law and disciplinary action.

Timely and effective redressal of complaints by an effective mechanism like complaints committee, headed by a woman and to necessitate third party intervention like NGO to prevent pressure from

higher officials. Where creating of awareness in this regard and ensuring that irrespective of private or public employer, all the aforementioned rules and prohibitions shall be included in the respective Industrial Employments (Standing Orders) Act, 1946.

Policy on Prevention of Sexual Harassment and its Objectives-

Based on the Vishaka Case guidelines, every company shall formulate a policy to prohibit, prevent and redress sexual harassment issues at workplace so as to

- Ensure compliance of Supreme Courts' judgement and the Act
- For providing a grievance redressal mechanism to attend to complaints in that regard
- To prevent unwanted conduct, both physical, verbal or non-verbal contact, jokes, comments, mannerisms etc.

IV - Post Vishaka scenario

Almost 90% of the workplace abuse remains undisclosed due to varied factors like retention of employment as the job is the sole financial support, loss of self-esteem when such abuses are exposed in public, fear of further victimization etc. However, some cases being too prominent just cannot be hidden from outside world. Few such cases are- A gruesome rape and murder case that shook the entire nation was Nirbhaya case¹¹ (December 2012) where a 23 year old medical student was brutally gang raped by 6 men in a bus and was thrown naked in the streets of Delhi, who subsequently succumbed to injuries, caused the parliament and Judiciary to rouse from rest bring into force Criminal Law (Amendment) Act, 2013, so as to cover women from such demonic perpetrators. The term Sexual harassment itself got a structure only after insertion of Sec. 354A of IPC and in the same year the Sexual Harassment of Women At Workplace Act, 2013 was enacted, standing as the first of its kind legislation in India.

In *Apparel Export Promotion Council v. A.K. Chopra*¹² a complaint was filed by a women employee who was abused by her superior but no physical contact was involved. Invoking the Vishaka case guidelines, the court held the superior guilty, stating that physical contact was not necessary for sexual harassment. Similarly, the Vishaka case guidelines was implemented in *Saudi Arabian*

¹¹ *Mukesh and another v. State (NCT Delhi) and others*, (2017) 6 SCC 1

¹² (1999) 1 SCC 759

*Airlines, Mumbai v. Shehnaz Mudbhalkal*¹³ wherein the manager of the airlines harassed an employee Shehnaz Mudbhalkal, requesting from her, sexual favours and threatened to fire her on denial of the same. The Court held that she has to be reinstated with payment of back wages.

In *Ruchika Singh Chhabra vs. Air France India and another*¹⁴ A survey by the National Bar Association, was put to the notice of Delhi High court, which revealed that most of the companies weren't following the guidelines put down under Vishaka case, including the respondent company. The court held that "An employer's unwillingness or incapacity to provide such safety and equality at the workplace is implied by a permissiveness or infringement in execution in one instance", and also made it clear that the Vishaka guidelines are to be strictly adhered to and not as a mere ritual, so as to maintain justice and ensure that no one is subjected to unwanted or inappropriate behaviour.

*Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and others*¹⁵ Court held that considerations are given to the complaint made against the 'respondent' who shared the same gender as that of the complainant, both being women.¹⁶ Court further held that reads "any person" whereby even a same gender respondent/ accused can be brought within its purview¹⁷. Similarly, with regard to filing a complaint of sexual harassment under Sec.9 of the Act, there is nothing that precludes complaint against the same gender.

V - Legal Frame Work on Sexual Harassment of Women at workplace

The **Object** of the Act – the revamp of criminal laws in 2013 also resulted in the separate enactment of this act to curb the rising statistics of workplace abuse against women, to provide protection, and for the prevention and redressal of complaints of sexual harassment and for other matters connected therewith.

The Act also recognizes and defines the victim as "**Aggrieved Woman**" of workplace abuse and that every woman has a right to safe and secure work environment irrespective of her age, work status,

¹³ 1999 (1) BomCR 643

¹⁴ Ruchika Singh Chhabra vs. Air France India and another., 2018 SCC Online Del 9340

¹⁵ November 27, 2020.

¹⁶ The Sexual Harassment of Women at Workplace Act, 2013

¹⁷ Sec. 2(m) of the Sexual Harassment of Women at Workplace The Act, 2013

whether domestic worker, ad hoc, regular/ temporary, for remuneration/ voluntary basis, daily wage, employed directly or through agent, contract worker, trainee, probationer, apprentice and such others shall be protected under the Act.

“**Employer**” under the act includes –

- Head of Departments/ organizations/ establishments or branch/ unit of the Appropriate Government (Central/ State Government owned or established workplaces), local authority or such other officers specified thus;
- Persons responsible for management, whether contractual or otherwise, or those in charge of supervision and control of a designated workplace;
- A household who employs domestic worker;

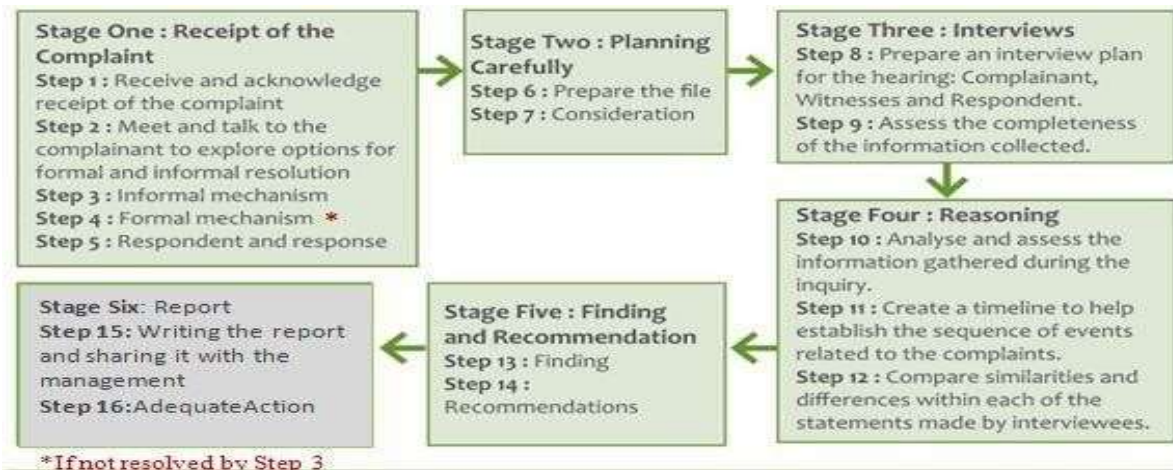
As per the POSH Act, 2013 and by the Guidelines of Vishaka case, the above mentioned authorities, without creating a hostile work environment, are required to maintain a workplace free of any kind of harassment, especially sexual harassment, for which

- i) They shall effectuate detailed policies
- ii) Conduct awareness orientations
- iii) Constitute various committees to for redressal of complaints and ensure such complaints are heard of and dealt with by trained/ skilled persons
- iv) Prepare and submit reports on the same to the local authorities and appropriate governments.

Preventive and Prohibitive Measures under the POSH Act, 2013

The Act provides for the constitution of two committees, each of which must be represented by a minimum of 50% women and the members of which shall hold office for a period not exceeding 3 years from the date of appointment. These are the Internal Complaints Committee and the Local Complaints Committee so as to enable women of organized and even unorganized or small scale business establishments, having complaints against an employer or co-worker, be it at an establishment/ domestic level, to work in a harassment free environment.

The complaint procedures provided under the act however, are complex and consists of 15 burdensome steps, exhibited in the image below¹⁸, after the completion of which alone,adequate action shall be taken on the wrongdoer.



Source: Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Government of India (2014).

The Act, despite having noble aims couldn't achieve it as planned for varied reasons.

1. The Act came into force with noble objectives yet has been struggling to reach its goal due to the existence of loop holes in the law. The law talks about creating redressal committees like ICC at institutions or offices but makes no mention of it being mandatory, neither does it acknowledge its expensiveness.
2. The Cumbersome procedures involved in registering a complaint with one of the two committees, subsequent planning, interview for hearing the complaint, reasoning and preparing reports on findings and making recommendations after which alone action will be taken, is nothing but delayed or rather denied justice, since by that time the abuser may have found his way out of the issue.
3. Moreover, it talks about the members of ICC being from the same organization, which paves way to employer supportive employees which shall make the decision unfavourable to the victim.
4. The Act holds employer in-charge of addressing employee grievances, but doesn't make a mention of situations when employer is the wrongdoer himself. And with regard to co-workers being witness to a particular issue, will refuse to testify the same in fear of losing the job/ victimization.

¹⁸ Handbook on Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Government of India (Ministry of Women and Child Development) 8, (2014)

VI - International Instruments governing sexual harassment of women at workplace and gender discrimination

Sexual Harassment is a major Human Right violation and thus stands covered under varied conventions like

1. Universal Declaration of Human Rights, 1948 under Articles 1, 2 and The Convention on Elimination of All forms of Discrimination against Women (CEDAW) as mentioned above was ratified by India in 1993 and excerpts from it were also used to help interpret Art. 14, 19 and 21 of the Indian Constitution with regard to sexual harassment and related violence.
2. Meanwhile the International Labour Organization, in its Centenary Conference held in June 2019 adopted the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No.206) so as to ensure that violence and harassment in the world of work will no longer be tolerated, to put to an end to all forms of gender-based violence and it was developed by the Tripartite consultation of Employer, employee and government representatives. This remains unratified by India.
3. International Covenant on Economic, Social and Cultural Rights, 1966, aims at enjoining member states to guarantee rights without any discrimination, so as to ensure equality between men and women as enshrined in Article 7.
4. ILO Discrimination (Employment and Occupation) Convention, 1958 and United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 prescribes states to eliminate all forms of discrimination against women in employment so as to uphold their equality. Recommendation No.19 in 1992 talks about gender specific violence and the measures states are bound to take.
5. The Beijing Platform of Action, drawn at the UN Women's Conference in 1995, advances women's rights and eliminates violence against women, including harassment at work.

VII - Conclusion and Suggestions

A look back at the past certainly shows our progress from having no mechanism or legislations for redressal of workplace abuse to a woman to having a fullfledged and robust mechanism at present. However, an in-depth view of the issues has brought to light that a law cannot be unidimensional, that too a law as revolutionary as Sexual Harassment of Women in Workplace with huge social implications definitely has to make its way to perfection only with much struggle. I personally feel that there's a certain limit which alone government/ judiciary can help, beyond which, public awareness, sensitivity, and being rightful to ones' conscience, with regard to the abusers is what matters most. Propelling towards a fear free and safe work environment for women along with positive hope shall be the end goal and outcome of this research. The following are suggestions of this paper

1. Addressing the shortfalls of the POSH Act will itself open up a wide way against sexual harassment of women at workplace.
2. Further, creating a committee/ organization specially to look into such workplace abuse issues, free from the concerned workplaces and its members' control.
3. Reducing the number of steps to deal with a complaint so as to render timely justice.
4. Following the UN Guiding Principles on Business and Human Rights³⁰ 'Protect', 'Respect' and 'Remedy' should be the main moto, also ensuring that mere existence of right will not suffice, but "access to that right" should also accompany. And this "access to justice" shall be coupled with "access to effective remedy" and it's the responsibility of state, government, companies/ organizations and other civil organizations to ensure its effective implementation.
5. Many conventions with regard to women's rights and safety are effected but left unratified, ratification or adoption of its crux into national legislations, may help serve the purpose.
6. Only when the state stands by women, will they have the confidence to go against the wrongdoer, failing which the fear of further victimization or torture may never allow them to take a step forward.