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# SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

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The Preamble of the Constitution of India stresses the necessity of ensuring equal status and opportunities for every citizen. Article 14 of the Constitution further solidifies this notion by ensuring equality before the law and equal protection of the laws for all individuals. This means that everyone within India's territory is entitled to fair treatment under the legal system, regardless of factors such as caste, religion, gender, or place of birth. This principle underscores India's dedication to justice, fairness, and upholding the fundamental rights of its citizens.

Ensuring a safe workplace is a legal entitlement for women. The Constitutional principles of equality and personal liberty, as outlined in Articles 14, 15, and 21 of the Indian Constitution, guarantee equal protection under the law, freedom from discrimination, and the right to life and personal liberty. These rights are further supported by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), ratified by India in 1979. Often referred to as an international charter for women's rights, CEDAW advocates for gender equality in all aspects of life, including politics, economics, society, culture, and law. It emphasizes that any form of discrimination or infringement upon women's dignity contradicts the principle of equal rights.

Sexual harassment represents a significant violation of women's rights to equality and dignity, stemming from patriarchal beliefs that men are superior to women and that certain forms of violence against women are permissible. Workplace sexual harassment, often dismissed as harmless or trivial, is a manifestation of sex discrimination and undermines women's fundamental rights, including their right under **Article 19(1)(g)** of the Constitution of India to pursue any profession or occupation. It not only harms the well-being of individuals but also diminishes workplace equality and productivity. Furthermore, entrenched socio-cultural norms often place blame on the victim, exacerbating inequality in both the workplace and society.

Despite the significant prevalence of sexual harassment in the workplace, many women refrain from reporting such incidents to the appropriate authorities. This reluctance often stems from concerns about potential retaliation from the harasser, fear of losing their job and livelihood, worries about facing social stigma, or apprehensions about damaging their professional reputation and personal standing.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 was created to make sure that women have safe workplaces and are treated fairly, giving them equal opportunities. If this law is properly enforced, it will help women enjoy their rights to equality, safety, and fair treatment at work. When women feel secure in their workplaces, they will be more likely to participate in work, which can lead to their economic empowerment and overall growth for everyone.

Even though official statistics indicate low participation of women in the workforce, a significant portion of their work isn't reflected in these numbers. Some argue that if all their work was considered, women's overall participation would be as high as **86.2%**. While official data reports only about **25.3%** of women working in rural areas and **14.7%** in urban areas, estimates suggest a much larger female workforce exists. This highlights the necessity to ensure their workplace safety and rights. Given that **93%** of women work in the informal sector and are not covered by protective laws, it's crucial to implement proactive measures to safeguard their workplaces.

It's widely recognized that providing safe working environments for women has a beneficial effect on their engagement in the workforce and enhances their efficiency, thereby benefiting the entire nation. Empowering women economically is crucial for the nation's progress, and this can only be accomplished by guaranteeing safe and secure work environments for women in all sectors and regions of the country.

## **Evolution of the Law on workplace.**

### **Vishaka and others v/s State of Rajasthan**

It is a case which deals with the evil of Sexual Harassment of a women at her workplace. It is a landmark judgment case in the history of sexual harassment which as being decide by Supreme Court. Sexual Harassment means an uninvited/unwelcome sexual favour or sexual gestures from one gender towards the other gender. It makes the person feel humiliated, offended and insulted

to whom it is been done. In many of the cases, it has been observed that homosexual labour harass an employee belonging to the same sex to which he belongs.

### **Facts**

The facts of this case are given below:-

Bhanwari Devi who was a social activist/worker in one of the Rajasthan's village. She worked under a social development program at rural level which was about to stop child marriage in a village and this social program was administered/ initiated by the Rajasthan's state government. Bhanwari Devi endeavored to stop the marriage of the Ramkaran Gujjars (thakurs) daughter, who was merely less than one year old i.e. she was an infant only. As a part of her duty, Bhanwari Devi tried to terminate the marriage of her infant daughter. Even of her vain-full efforts to stop the marriage, it happened, but Bhanwari devi was not excused or pardoned for her's this fault. She was exposed to or put forward to social punishment or boycott. September 1992, she was been gang raped by Ramkaran Gujjar and his five friends in front of her husband. The male doctor at normal primary health center declined to survey her and the doctor at Jaipur only made confirmation of her age without any recommendation of her being raped in her medical report. At police station too she was been continually taunted by the women countable for the whole of the midnight. In past midnight she was been asked by the policeman to leave her lehnga as the evidence of that incident and go back to her village. After that, she was only left with the bloodstained dhoti of her husband to wrap her body, as a result of which they had to spend their whole night in that police station. The Trial Court made the discharge of the accused people for not being guilty. The High Court in his judgement propounded that – "it was a case of gang rape which was conducted out of revengeful situation. All these statement and judgement, aroused women and NGO'S to file petition (PIL) in Supreme Court of India.

### **Issue Raised In This Case**

Whether, the enactment of guidelines mandatory for the repayment of sexual harassment of women at workplace.

### **Judgement**

The judgment on Vishaka Case was conveyed by Chief Justice J.S Verma as a representative of Justice Sujata Manihar and Justice B.N Kripal on account of writ petition which was file by Vishaka the victim of this case. The court observed that the fundamental rights under Article

14[2], 19[3](1)(g) and 21[4] of Constitution of India that, every profession, trade or occupation should provide safe working environment to the employees. It hampered the right to life and the right to live a dignified life. The basic requirement was that there should be the availability of safe working environment at workplace.

The Supreme Court held that, women have fundamental right towards the freedom of sexual harassment at workplace. It also put forward various important guidelines for the employees to follow them and avoid sexual harassment of women at workplace. The court also suggested to have proper techniques for the implementation of cases where there is sexual harassment at workplace. The main aim/objective of the Supreme Court was to ensure gender equality among people and also to ensure that there should be no discrimination towards women at their workplace.

After this case, the Supreme Court made the term Sexual harassment well defined, accordingly any physical touch or conduct, showing of pornography, any unpleasant taunt or misbehaviour, or any sexual desire towards women, sexual favor will come under the ambit of sexual harassment.

The Supreme Court's Vishaka Guidelines set a high standard for workplaces, institutions, and those in authority to protect women's fundamental right to equality and dignity at work. These guidelines outlined three main duties: to **prohibit, prevent, and address sexual harassment. In 2013**, the Government of India introduced the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, also known as the Act. This law aims to ensure women's right to equality and a harassment-free workplace by following the Vishaka guidelines. It's important to know that this Act offers women a way to seek justice through civil procedures, alongside other existing laws. So, any woman experiencing sexual harassment at work can pursue both civil and criminal actions to address the issue.

**The purpose of this handbook** is to provide workplaces, institutions, and organizations with a basic understanding of sexual harassment in the workplace. It also aims to offer simple and user-friendly information to Internal Complaints Committees and Local Complaints Committees established under the Act. These committees will learn about sexual harassment, their responsibilities in addressing complaints, and the inquiry process and outcomes.

This handbook is intended for employees and workers, informing them about workplace sexual harassment and their rights under the Act and associated Rules.

### **Structure of Handbook**

The structure of the handbook comprises six sections, each containing information for women, male co-workers, and employers on how to address sexual harassment at the workplace within the framework of the Act.

**Section 1** acts as an introduction, delving into the origins and background of the Act along with a concise overview of the Act's contents. It also outlines the objectives of this handbook and its target audience.

**Section 2** sets the context by defining a workplace and sexual harassment. It provides the reader with key elements, such as examples of sexual harassment as well as scenarios and the impact of such behaviour.

**Section 3** directs attention to the primary individuals and institutions engaged in the processes of prohibition and prevention, outlining their respective duties and responsibilities.

**Section 4** discusses the process of redress. It outlines the essential participants in the complaint mechanism, such as the complainant and respondent, and defines their roles. Additionally, it elaborates on the various stages of the complaint process, with special emphasis on the significant role played by the complaints committee.

**Section 5** elaborates on the monitoring obligations outlined in the Act.

**Section 6** outlines the significant international frameworks and highlights selected best practices concerning sexual harassment in the workplace.

The Justice Verma Committee put forward significant proposals concerning sexual offenses, rape, and the overall safety of women in India. Here are the main recommendations made by the committee across various aspects:

**Rape:** The committee stressed the importance of maintaining the classification of sexual offenses in the Indian Penal Code (IPC). It viewed rape and sexual assault not simply as crimes of passion but as acts of power. The committee suggested broadening the definition of rape to include any non-consensual sexual penetration, eliminating the exception to marital rape, and emphasized that marriage should not imply automatic consent to sexual activities.

**Sexual Assault:** The committee proposed recognizing non-penetrative forms of sexual contact as sexual assault, with a comprehensive definition encompassing all non-consensual sexual touching. It recommended a punishment of 5 years of imprisonment, a fine, or both for sexual assault, including the use of criminal force to disrobe a woman, which could result in 3 to 7 years of imprisonment.

**Verbal Sexual Assault:** The committee proposed repealing Section 509 of the IPC, which addresses the use of words or gestures to insult a woman's modesty. Instead, it suggested categorizing words, acts, or gestures creating unwelcome sexual threats as sexual assault, punishable by 1 year of imprisonment, a fine, or both.

**Sexual Harassment at Workplace:** For the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Bill, 2012, the committee recommended several changes. These included expanding the bill's scope to cover domestic workers, eliminating the need for conciliation, ensuring compensation from employers to victims, and establishing an Employment Tribunal in place of an internal complaints committee.

**Acid Attack:** The committee suggested addressing acid attack offenses separately from grievous hurt and supported imprisonment for 10 years or life for such offenses. Additionally, it recommended establishing a government corpus to compensate victims of crimes against women.

**Offenses in Conflict Areas:** To address concerns in conflict zones, the committee suggested reviewing the Armed Forces (Special Powers) Act (AFSPA), advocating for witness protection for complainants of sexual violence, and appointing special commissioners in conflict areas to monitor and prosecute sexual offenses.

**Trafficking:** The committee recommended amending the Immoral Trafficking Prevention Act,

1956, to effectively criminalize trafficking, including trafficking by threat, force, or inducement, and employing a trafficked person.

**Child Sexual Abuse:** To address child sexual abuse, the committee suggested defining terms like 'harm' and 'health' under the Juvenile Justice Act, 2000, to include mental and physical harm and health.

**Punishment for Crimes Against Women:** The committee opposed chemical castration and death penalty as deterrents for rape and recommended life imprisonment instead.

**Medical Examination of Rape Victims:** The committee advised against the two-finger test and recommended relying on the victim's previous sexual experience to determine consent.

**Police Reforms:** In terms of police reforms, the committee recommended establishing State Security Commissions and a Police Establishment Board, along with ensuring minimum tenures for high-ranking police officials.

**Reforms in Management of Cases:** The committee proposed establishing a Rape Crisis Cell, widespread use of CCTVs in police stations, online filing of FIRs, and enhanced police training for handling sexual offenses.

**Electoral Reforms:** It recommended amending the Representation of People Act, 1951, to disqualify candidates for sexual offenses.

**Education Reforms:** In the field of education, the committee suggested gender-neutral experiences for children, sexuality education, and adult literacy programs for gender empowerment.

**Impact of the POSH Act 2013:** The POSH Act, or the Prevention of Sexual Harassment at the Workplace Act, has significantly improved workplace safety in India. Enacted to provide a secure environment for all employees, regardless of gender, the Act outlines procedures for filing complaints and the responsibilities of employers. It has been instrumental in creating a fair and safe workplace environment, free from discrimination and harassment.

## **Cognizance of the Offence by court.**

The court can consider the offense based on a complaint filed by the aggrieved party or any individual authorized by the Internal Complaints Committee (ICC) or the Local Complaints Committee (LCC) (section 27(1)). No court lower in authority than a metropolitan magistrate or a judicial magistrate of the first class can adjudicate offenses punishable under this act (section 27(2)). It's noteworthy that all offenses under this act are considered non-cognizable.

According to the 2013 POSH Act, engaging in any one or more of the following actions would be considered as sexual harassment:

1. Physical contact and advances
2. Requesting or demanding sexual favours
3. Making sexually suggestive remarks
4. Displaying pornography
5. Any other unwanted physical, verbal, or non-verbal behaviour of a sexual nature.

## **Compliance applicable to company under the POSH Act.**

The POSH Act, or the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is a legal framework in India designed to address and prevent sexual harassment of women in the workplace. Companies are required to comply with several key provisions outlined in the Act. Here is a brief description of the compliances applicable under the POSH Act:

### **Steps involved in Compliance are as follows:**

#### **1. Formulation of a POSH Policy:**

Employers are mandated to formulate and implement a comprehensive anti-sexual harassment policy. This policy should define sexual harassment, provide examples, and outline the consequences for offenders.

Constitution of Internal Complaints Committee (ICC):

Companies with more than 10 employees are required to establish an Internal Complaints Committee. The ICC is responsible for receiving and addressing complaints of sexual harassment, conducting inquiries, and recommending actions.

## **2. Constitution of Internal Committee :**

- A Senior female employee as the presiding Officer.
- Two Internal members who have experience in social work or are committed towards working for the cause of women.
- An External member who is part of an NGO or organisation committed to do working towards the cause of women's harassment.

### **Training:**

Employers are obligated to organize workshops and awareness programs to educate employees about the provisions of the POSH Act, the company's policy, and the consequences of sexual harassment.

## **3. Display of Posters/Information :**

Companies are required to display Posters/information about the provisions of the POSH Act and the contact details of the ICC at prominent locations within the workplace which must mention the consequences of sexual harassment at workplace.

## **4. Arrangements of Awareness Sessions for the Employees and Internal Committee**

### **Quarterly Reports:**

The ICC needs to submit quarterly reports to the employer, providing details about the complaints received, actions taken, and the redressal measures implemented.

### **Annual Report:**

Employers are obligated to submit an annual report to the district officer, summarizing the actions taken by the ICC during the year. This report should maintain confidentiality and not disclose the identity of the aggrieved parties.

### **Protection against Retaliation:**

The POSH Act prohibits any adverse action or retaliation against the complainant. Employers must ensure that individuals who file complaints are protected from victimization or harassment.

### **Redressal Mechanism:**

The Act outlines a redressal mechanism for resolving complaints, which may include

conciliation, initiating disciplinary action against the offender, or providing assistance to the victim.

**External Member:**

The ICC should include an external member from a non-governmental organization or an expert in the field of sexual harassment to ensure fairness and impartiality in the inquiry process.

**Compliance Certification:**

Employers must obtain an annual compliance report from the ICC, certifying that the company has complied with the provisions of the POSH Act.

It's crucial for companies to diligently adhere to these compliances to create a safe and harassment-free work environment for all employees.

Here are examples of behaviours that can constitute sexual harassment in the workplace:

1. Making sexually suggestive remarks or innuendos.
2. Engaging in serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
3. Making offensive comments or jokes.
4. Asking inappropriate questions, making suggestions, or remarks about a person's sex life.
5. Displaying sexist or otherwise offensive pictures, posters, messages, or emails.
6. Using intimidation, threats, or blackmail in exchange for sexual favours.
7. Threatening, intimidating, or retaliating against an employee who reports unwelcome behaviour with sexual overtones.
8. Extending unwelcome social invitations with sexual undertones, commonly understood as flirting.
9. Making unwelcome sexual advances, with or without promises or threats, whether explicit or implicit.
10. Physical contact such as touching or pinching.
11. Caressing, kissing, or fondling someone against their will (could be considered assault).
12. Invading personal space (such as getting too close for no reason, brushing against or cornering someone).
13. Persistently asking someone out, despite being rejected.
14. Stalking an individual.

15. Misusing authority or power to threaten a person's job or undermine their performance in exchange for sexual favours.
16. Making false accusations and undermining a person behind closed doors for sexual favours.
17. Damaging a person's reputation by spreading rumours about their private life.

### **Forms of Workplace Sexual Harassment:**

In the workplace, sexual harassment typically encompasses two primary forms of inappropriate conduct:

- **Quid Pro Quo** (literally 'this for that'):
  - Implied or explicit promises of favourable/unfavourable treatment in employment.
  - Implied or explicit threats concerning an individual's current or future employment status.
- **Hostile Work Environment:**
  - Creating an atmosphere at work that is hostile, intimidating, or offensive.
  - Subjecting individuals to humiliating treatment that may jeopardize their health or safety.

## **Conclusion**

The effectiveness of the POSH Act as a legal recourse for women experiencing sexual harassment in the workplace is evident in the increasing number of complaints filed each year. The act was specifically designed to address instances of sexual harassment against women in professional settings, drawing upon the guidelines laid out in the Vishakha judgment. This judgment exemplified the essence of judicial activism.

The system established by this act allows women to promptly seek resolution for their grievances. It is imperative for the committees and authorities involved to be diligently monitored. The confidentiality of victims' and witnesses' identities and addresses must be maintained at all times, safeguarding them from public and media exposure.

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