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SEXUAL HARRASMENT OF WOMEN AT WORKPLACE ACT, 2013 IN ADDRESSING WORKPLACE HARRASMENT IN INDIA.

AUTHORED BY - MISHA SINHA

ABSTRACT

This research paper explores the impact of legal frameworks and organizational policies on addressing **Sexual Harassment of Women** in the workplace in India. The issue of workplace sexual harassment has gained significant attention in recent years due to its detrimental effects on the well-being and professional advancement of women. In India, sexual harassment at workplace is one of the most common crimes against women and is also seen as unconstitutional infringing on the fundamental rights of women. Sometimes women raise their voices against such injustice but often it is buried with time. The need for preventing such injustice and appropriately dealing with such cases. The Sexual Harassment has gained significant attention in recent years due to its detrimental effects on the well-being and professional advancement of women. Recognizing the need for comprehensive measures, India has implemented legal frameworks and organizational policies to combat sexual harassment in the workplace. In **Article 15**, the Indian Constitution seeks equality and provides special laws that help women take their rightful place in society. Gender identity is accepted to ensure gender equality in India. The Sexual Harassment of Women in the Workplace Act **2013** is a welcome addition to this legislation.

INTRODUCTION

Sexual harassment in a workplace is a significant global issue affecting both developed and developing countries alike. It surpasses geographical, social, economic, traditional, and spiritual boundaries. A trouble shooting aspect of this problem is the use of derogatory language, which undermines the principles of gender equality, human rights, and human dignity. The complexity of this matter arises from its association with societal norms influenced by biased gender perspectives and how women are perceived and treated. India has witnessed changes in the status of women due to industrialization, globalization, and progress in various fields. While women have made strides in the workforce, unfortunately, there has also been a rise in incidents of abuse

and harassment. Regrettably, such occurrences of sexual harassment are grossly underreported. This is primarily because women fear potential damage to their personal and professional reputations as well as societal stigma and threats to their livelihoods. As a result, the true scale of the problem remains obscured. Sexual violence in the workplace is a violation of women's rights to equality, life, and liberty. It creates an unstable and inhospitable work environment that discourages women from working, undermines inclusive developmental goals. The Sexual Harassment of women at Work (prevention, prohibition, and Redress) act was drafted with this principle in mind.

No matter how hard we try to protect but we failed as a society such violations will always happen. Crimes against women are considered the weakest members of the society. As a result, women are subjected to **atrocities like foetus, human trafficking, stalking, sexual harassment, sexual assault, and the most heinous crime rape**. It is illegal to harass someone (whether a candidate or an employee) because of their gender. The Supreme Court first recognized the need for such a law in **Vishaka v. State of Rajasthan**. Although there is no law to combat sexual harassment of women workers, the Supreme Court has issued guidelines to all workplaces or institutions until laws are passed to address the issue, the Supreme Court has issued guidelines to all workplaces or institutions until laws are passed to address the issue. The Supreme Court has cited the fundamental human rights principles contained in the Constitution of India under the **Articles 14,15,19 (1) (g) and 21** as well as the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDDAW**), This was approved by the Government of India in **1993**. The directive of the Supreme Court should be recognized as law as stipulated in **Article 141** of the Constitution.

CASE LAW'S

VISHAKA AND ORS.

V.

STATE OF RAJASTHAN

In this case, which deals with the evil of sexual Harassment of a Women at her workplace. It is a landmark judgement case in the history of sexual harassment which as being decide by Supreme Court. Sexual Harassment means an unwelcome sexual Favor 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 harasses an

employee belonging to the same sex to which he belongs. Sexual harassment is also termed as “**Eve Teasing**” in India, and it can be determined from the following acts like- passing of indicative or typical comments or jokes, uninvited touching, making appeals for sex, sexually blunt pictures or text messages or emails, discredit person because of sex. Accordingly, Sexual Harassment violates the fundamental right of the women of gender equality which is codified under **Article 14 of Indian Constitution** and the **fundamental right to life** and to live a dignified life is **violated/infringed** under **Article 21 of constitution of India**. Even though there has been no provision for sexual harassment at workplace under **Indian Constitution**. **Justice Arjit Pasayat** beholder from his beautiful thought that- “while a murderer destroys the physical frame of the victim, on the other hand the rapist defiles the soul of a helpless female”.

Sexual harassment is one of the social evils faced by the fragile portion of the society. Now at this point of time the high society people or the people who commits sexual harassment should become aware about the vital needs or rights of women or either when this tranquil volcano of anger will erupt will cause immense danger and shattering which would have equal consequences which is cause from the burst or eruption of an inactive volcano.

JUDGEMENT

The judgment of **Vishakha's 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 **Vishakha** the victim of this case. The court observed that the **fundamental rights** under **Article 14, 19(1)(g) and 21 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. 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 to ensure that there should be no discrimination towards women at their 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 to ensure that there should be no discrimination towards women at their workplace.

HOW WAS THE POSH ACT FORMED?

The **POSH Act** defines sexual harassment to include unwelcome acts such as physical contact and sexual advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. In **1992**, **Bhanwari Devi**, a social worker with the **Women's Development Project** of the Rajasthan government was **gang-raped** by **five men** after she tried to prevent the marriage of a **one-year-old girl**. While hearing pleas filed by activist groups against the crime, the **SC**, noting the absence of any law "enacted to provide for effective enforcement of the basic human right of gender equality" guarantee against "**sexual harassment at workplaces**", laid down a set of guidelines in **1997**, christened the **Vishakha Guidelines**, to fill the statutory vacuum till a law could be enacted. These were to be "**strictly observed in all workplaces**" and were binding and enforceable in law. The Court drew its strength from several provisions of the Constitution including Article 15 (against discrimination on grounds only of religion, race, caste, sex, and place of birth), also drawing from relevant International Conventions and norms such as the General Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), which India ratified in **1993**.

Notably, the recent flagging of lapses in the Act by the apex court is not the first time it has had to issue directions for robust implementation, it had to intervene and issue follow-up directions for the implementation of the Vishakha Guidelines multiple times after **1997**. Meanwhile, the **National Commission for Women** submitted drafts of a Code of Conduct for the **Workplace** in **2000, 2003, 2004, 2006** and **2010**.

After this, the **Protection of Women against Sexual Harassment at Workplace Bill** was introduced by then **Women and Child Development Minister, Krishna Tirath**, in **2007**. It was later tabled in Parliament and went through amendments. The amended Bill came into force on **December 9, 2013**, as the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) or POSH Act**.

CHALLENGES IN IMPLEMENTING THE POSH ACT 2013?

The **POSH Act 2013** was introduced in India to protect women in the workplace from sexual harassment. Despite its noble aims, there have been some challenges in implementing the Act:

Definition of Sexual Harassment: The Act defines sexual harassment broadly, covering any unwelcome act or behaviour, whether physical, verbal, or non-verbal, that is sexually tinted and interferes with a woman's work or creates an intimidating, hostile, or offensive environment for her.

Lack of Awareness: Many employees and employers remain unaware of the provisions and obligations under the Act, leading to inadequate prevention measures and delayed responses to complaints.

Fear of Repercussions: Fear of retaliation or social stigma often deters victims from reporting incidents of sexual harassment. It is essential to create an environment that encourages victims to come forward and ensures their protection throughout the process.

Right Education and Awareness: The POSH Act 2013 can be effective in protecting women from sexual harassment and promoting a safe workplace.

IMPORTANCE OF POSH AWARENESS SESSIONS

Sexual harassment at the workplace is a concern across industries. It imposes a range of costs that impact individuals, including the aggrieved person, the respondent (i.e., the person against whom a complaint has been filed), the employers and the company at large. In India, we have a dedicated law named the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH Act)** which was enforced in **2013**. The objective of this act is to create safe workplaces for women in our country and protect their dignity. The law has laid down detailed provisions with regards to the redressal mechanism in case a woman who has been subjected to some form of sexual harassment at the workplace decides to file a complaint. While redressal comes into picture after an incident has occurred, the spirit of the **POSH Act** is prevention. To achieve this, the law has laid down the primary responsibility on the employer to create safe workplaces free from any form of sexual harassment. One of the preventive steps which employer is mandated to take is to organise workshops and awareness programs at regular intervals for sensitising the employees with the legal provisions and programs for the Internal Committee (**IC**)

members to equip them with the skills required to conduct **POSH** inquiries in a fair and just manner while ensuring it is within the ambit of the law.

BENEFITS OF CONDUCTING POSH AWARENESS SESSIONS

Compliance with the Law: Since the law has made it mandatory to conduct **POSH awareness** sessions, doing the same will help comply with the legal obligations. The logic to have this provision in the law was to ensure that everybody who is a part of the workforce is aware of what could constitute sexual harassment, who, when, where and how can a complaint be filed and the available redressal options among other things.

Helps in creating healthy workplaces: Not only legal compliance, but it also helps in creating a safe, equitable and healthy work environment. The first step towards achieving the goal of safe workplace free from any form of harassment, including sexual harassment, is to **create awareness and sensitise the employees**. Conducting **POSH** trainings helps in getting closer to this goal as the employees not only understand what the law says in terms of what constitutes sexual harassment but also explains what the consequences of their actions could be. This also covers the conduct expected of them at workplace, in line with the vision of the organization.

Therefore, conducting **POSH awareness** sessions has much more benefits than just compliance. While conducting such sessions, it is essential that organizations ensure these sessions are planned well, cover the key aspects that employees must know and speak about the vision of the organization, along with measures taken so far. It's also very important to explain the interpretation of 'sexual harassment' in the current world as that is most likely to impact employees in their day-to-day life.

PUNISHMENT UNDER POSH LAW:

1. Punishment with fine up to **50,000**(fifty thousand) can be done on the employer.

* If there is no internal Complaint Committee.

* If the employer has contravened or attempts to contravene or abets contravention or abets contravention of other provisions of this act or any rules made under the **Act**.

* If the employer fails to act under the **sections 13,14, and 22**.

2. If an employer after having been previously convicted of the same offence **punishable under this Act** subsequently commits and is convicted of the same offence, he shall be liable.

* Twice the punishment, which have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

* Cancellation, of his license or withdrawal or non-renewal or approval or cancellation of the registration by the government or the local authority required for carrying on his business activities.

3. When the Internal Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false it may recommend to the employer appropriate action to be taken according to the service rules as may be applicable to him/her.

CONCLUSION

Sexual Harassment is an age-old practise that has overcome all societal boundaries, such as race, gender, sex, and colour in both developed and developing countries. An individual can encounter sexual harassment in the workplace regardless of their gender. There are several factors that contribute to workplace harassment, including to workplace harassment, including gender discrimination, insufficient distribution, favouring character and the harassers worldwide. Sexual harassment includes not just seeking sexual harassment and unwelcome physical contact, but also the psychological strain felt by the harasser because of sexual assault, coercion, or unwanted sexual attention. To encourage greater reporting, the POSH ACT should contain clarification of applicability, accountability, implementation, and monitoring. To attain high workplace productivity, companies and authorities must adopt, implement, and encourage best practices for detecting and responding to workplace harassment. The most effective strategy to avoid such hazardous working situations is to actively advocate for measures that raise awareness and encourage prevention efforts.

We have certainly come a long way from having no mechanism for redressal available to a woman to a very potent and robust mechanism available for redressal. In depth view in the topic makes us realise that any law cannot be unidimensional. And a law as revolutionary as sexual harassment of women in workplace has had huge social implications, what I feel is that this law is certainly a step in the right direction. What it requires is public awareness, sensitivity, and robust

implementation. I think when any incident happens people should not become judgemental against the woman or the man. The due process should be followed.

There should also be a Men's Commission in place so that even men have right to address their grievances in a systematic manner.

As the job of the Act is to bring equality not to suppress any gender.

