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EXPLORATORY ANALYSIS ON SEXUAL HARASSMENT AT A WORKPLACE, 2013

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ABSTRACT:

This research paper discusses the undesirable activities performed in India at the workplace with women, i.e. sexual harassment against women at the workplace. The form also deals with laws enacted to prevent women at the workplace. Like Indian government passed Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Sexual harassment is an extensive legal issue, and significant forms of violence against women in India are performed. It is a universal problem in the world, whether it is to be developed or developing or under-developing countries. It is a more problematic and damaging emphasis on both men and women. It has probably been seen to be happening with the female gender.

The sexual harassment of women in the workplace violates the basic fundamental rights of women, especially the "Right to equality" under articles 14,15 and her right to life and to live with dignity under Article 21 of the Constitution of India. It is a criminal offence according to section 354A of the Indian penal code, 1860; it deals with the meaning of sexual harassment and punishments for sexual harassment. This act protects women from all types of sexual harassment at their workplace in the government sector or the private sector. The guideline was issued in a supreme court landmark case Vishaka v. the State of Rajasthan will be treated as law under Article 141 of the Indian constitution. Before this act, there was no law around the measures to check the abhorrence of inappropriate behaviours faced by women. This paper indicates making some suggestions to the government to pay special attention towards appointing the monitoring team to visit the government offices and the private sector (unorganised) to prevent sexual harassment against women in the workplace.

Research Problem :

Women are considered as vulnerable to all kinds of violence and harassment. In spite of various laws being enacted to protect from being subjected to Human Rights violations the atrocities continue. Sexual Harassment is considered to be a significant issue faced by working women and the number of cases reported is increasing at an alarming rate. But still, there are a number of cases where women silently suffer sexual harassment fearing loss of jobs, their reputation, etc. There is a need to relook into the effectiveness and implementation of Sexual Harassment in the Workplace.

Research Question:

1. What are the psychological and physical effects of Sexual Harassment on the personal and family life of Victims?
2. What measures can be adopted to prevent, control and minimise the incidents of Sexual Harassment in the workplace?
3. Whether the POSH Act has been effective in curbing Sexual Harassment?
4. What is the role of the judiciary in protecting the interest of victims of Sexual Harassment?

Research Objectives:

- To analyse various kinds of sexual harassment inflicted on women employees.
- To ascertain the causes and effects of sexual harassment in the workplace
- To investigate how to avoid sexual harassment in a workplace
- To study laws relating to sexual harassment

National Laws

1. THE PROHIBITION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

Section 2 – Definitions

- (a) Aggrieved woman
- (e) Domestic worker
- (f) Employee
- (g) Employer

- (m) Respondent
- (n) Sexual harassment
- (o) Workplace
- (p) Unorganized sector

Section 3 – Prevention of sexual harassment

Section 4 – Constitution of Internal Complaints Committee

Section 5 – Notification of District Officer

Section 6 – Constitution and jurisdiction of Local Complaints Committee

Section 7 – Composition, tenure and other terms and conditions of Local Complaints Committee

Section 8 – Grants and audit

Section 9 – Complaint of sexual harassment

Section 10 – Conciliation

Section 11 – Inquiry into the complaint

Section 12 – Action during the tendency of Inquiry

Section 13 – Inquiry report

Section 14 – Punishment for false or malicious complaint and false evidence

Section 15 – Determination of compensation

Section 16 – Prohibition of publication or making known contents of complaint and inquiry proceedings

Section 17 – Penalty for publication of making known contents of complaint and inquiry proceedings

Section 18 – Appeal

Section 19 – Duties of Employer:-

- a) Provide a safe working environment
- b) Display penal consequences of sexual harassment
- c) Organize workshops
- d) Provide necessary facilities to ICC or LCC
- e) Assist in securing the attendance of respondents and the aggrieved person before ICC or LCC
- f) Make information regarding the complaint available to ICC or LCC
- g) Assist woman – IPC
- h) Cause to initiate action under IPC

- i) Treat sexual harassment as misconduct
- j) Monitor the timely submission of reports by the ICC

Section 20 – Duties and powers of District Officer:-

- a) Monitor the timely submission of reports by the LCC
- b) Take measures to engage NGOs for creating awareness of sexual harassment and rights of women.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (also referred to as the “POSH Act”) came into existence in 2013. The Act establishes a mechanism for dealing with sexual harassment complaints in the workplace. The PoSH Act has been implemented to prevent and protect women from sexual harassment in the workplace, thereby ensuring a safe working environment for women.

The POSH Act, as mandatory compliance, requires every company with more than ten employees to constitute an Internal Complaints Committee (ICC) in the prescribed manner to receive and address the complaints of sexual harassment from women in a time-bound and highly confidential manner. The person who can file a complaint has to be a woman; the POSH Act is not gender-neutral.

2. THE VISHAKA GUIDELINES

The Hon’ble Court took reference from the international conventions to proceed with the case. It referred to the Beijing Statement of Principles on the independence of the Judiciary in the LAWASIA region to function as a guardian of citizens’ rights and independently make laws without any legislative framework. Then the Hon’ble court took reference from the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). They were-

Article 11 (1) (a) & (f)- which states that the State takes all appropriate measures to eliminate discrimination against women in the field of employment.

Article 24 states that the State shall undertake to adopt all necessary measures at the

national level aimed at achieving the full realisation.

The Hon'ble Supreme Court framed the guidelines to prevent sexual harassment at the Workplace, known as ***Vishaka Guidelines***, that were to be treated as law declared under Article 141 of the Indian Constitution. These guidelines were the foundation for The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. **INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946**

It is a focal sanctioning that, among other things, requires a business to characterise and distribute uniform states of work through standing requests. The standing requests ought to contain terms of business, including, long periods of work, wage rates, shift working, participation and late coming, arrangement for leaves and occasions and end or suspension/excusals of representatives. It applies to each modern foundation wherein at least 100 workers are utilised, or were utilised on any day of the previous twelve months. This Act reaches out to the entire of India. The Standing Orders Act endorses Model Standing Orders, filling in as rules for bosses, and if a business has not outlined and guaranteed its standing requests, the arrangements of the Model Standing Orders will be appropriate. The Model Standing Orders not just characterise 'lewd behaviour' by the definition under the Vishaka Judgment, but also conceives the necessity to set up a grumblings board for redressal of complaints relating to work environment inappropriate behaviour. It is intriguing to take note that 'inappropriate behaviour' isn't restricted to ladies' compelled Rules.

4. **INDIAN PENAL CODE, 1860**

Conduct that might be interpreted as inappropriate behaviour, can likewise comprise an offence and be punished under the IPC. Preceding the Criminal Amendment Act, 2013, it was brought inside the ambit of Section 354, which made any demonstration insulting the unobtrusiveness of a woman's wrongdoing. After the correction, Section 354A has been embedded to make lewd behaviour a specific offence. The below sections address the offence violation of inappropriate behaviour:

Section 294

Section 354(A)

Section 509

5. THE INDECENT REPRESENTATION OF WOMAN (PROHIBITION) ACT, 1987

An Act to restrict obscene portrayal of women through ads or in distributions, works, compositions, figures or in some other way and for issues as in addition to that therewith or coincidental to it. If an individual irritates one more with books, photos, artistic creations, films, leaflets, bundles, and so on containing 'disgusting portrayal of women,' they are responsible for a base sentence of two years. As per this Act, "obscene portrayal of women" signifies the portrayal in any way of the figure of a woman; her structure or body or any part thereof in such manner as to be profane, slanderous to, or stigmatising women, or is probably going to debase, degenerate or harm the public ethical quality or ethics.

International Laws and Conventions

At a global level, lewd behaviour has been recognised as a common liberties infringement as it hurts the pride of the individual, badgering and can prompt hamper the close to home and mental prosperity of the individual. As inappropriate behaviour, by and large, supposedly progressed towards a woman, it is likewise seen to be a result of the interminable segregation looked at by women. As such global shows like the UN Charter and CEDAW examines the disposal of all types of separation looked at by women on all fronts. Occurrences of lewd behaviour are expanding dramatically — particularly in Asian nations, where over 50% of the total populace dwells. In India, a woman is physically hassled every 12 minutes. In China, an overview was led by Women's Watch China in 2009, which found that 20% of the 1,837 female respondents who talked had encountered lewd behaviour at work. Workplace Bullying is a universally perceived issue reflected in the new plans of global associations like the International Labor Office (ILO) and the World Health Organization (WHO). The ILO additionally directs far-reaching consciousness of the issue of lewd behaviour as it is segregation on the ground of sex in business and occupation. As a result, the Committee of Experts on the Application of Conventions and Recommendations led a unique study in 1996 on Convention No. 111. It affirmed that lewd behaviour is a type of sexual victimisation of women in work that subverts correspondence, harms working connections and debilitates efficiency.

1. The Convention on The Elimination of All Forms of Discrimination against Women (CEDAW)

2. Declaration on The Elimination of Violence against Women:

3. *The United Nations Fourth World Conference on Women*
4. *The Discrimination (Employment And Occupation) Convention, 1958*
5. *Indigenous and Tribal Peoples Convention, 1989*
6. *Universal Declaration of Human Rights*

Introduction

With globalisation, the role of women has changed now. Now women are independent. They are not only the housekeeper but can also run the houses solely. But with the nation's development and the high rise of women, many problems are faced by women in the workplace that are not acceptable. Such unacceptable behavior/behaviour in the workplace is detrimental to the economy. Sexual harassment in women at the workplace is considered a violation of women's rights. It creates an insecure and hostile work environment, which discourages women's participation in work. Before the guideline of supreme court landmark case Vishaka and others v. the State of Rajasthan (1997) 6 SCC 241, AIR 1997 SC 3011, the women had taken to the matter of sexual harassment at workplace register complaint under sec 354 and 509 of Indian penal code. After 16 years of Vishaka's case, the sexual harassment of women at work place (Prevention, Prohibition, and Redressal) act 2013. This act was enacted to protect against sexual harassment of women in the workplace. This act defines sexual harassment as unwelcome acts or behaviour (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. When we see many women entering into the for today an contributing to the country we also see that many women are facing sexual harassment at the workplace on daily bases. Now the contract is this act where it's become an obligation for an employer to provide safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity.

WHAT IS SEXUAL HARASSMENT?

The following definition gives section 354A of the Indian penal code A man committing any of the following acts

- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- A demand or request for sexual favours; or

- Showing pornography against the will of a women women; or
- Making sexually coloured remarks shall be guilty of sexual harassment.

Any man who commits the first three-point offence shall be punished with rigorous imprisonment for the term, which may be extended to three years, with fine or both.

Any man who commits the last point offence shall be punished with imprisonment for the term, which may be extended to one year, with fine or with both.

Earlier, there were no laws related to the Indian penal code that could be evoked. There were three sections in the Indian penal code S.94, S.354 and S.509 to deal with such type of crime as sexual harassment of women.

Examples of sexually harassing behaviour include:

- Unwelcome touching
- Suggestive comments or jokes
- Sexually explicit pictures or posters
- Staring or leering
- Requests for sex
- Unwanted invitations to go out on dates
- Sexually explicit emails or SMS text messages
- Sexually explicit physical contact
- Insults or taunts based on sex
- Unnecessary familiarity, such as deliberately brushing up against a person
- Intrusive questions about a person's private life or body

CONSTITUTIONAL PROTECTION OF WOMEN AGAINST THE SEXUAL HARASSMENT AT THE WORKPLACE

The Indian constitution ensures the rights of every individual “ to practice any profession, or to carry on any occupation, trade or business ” under Article 19 (1)g. Participating in public employment is a constitutional right of every woman, and this right is denied in the process of sexual harassment, which forces us to keep away from such job. Sexual harassment of women at the place where women work exposes her to a significant risk and hazard. The right to life and personal liberty is also violated by the sexual harassment of women at the workplace according to article 21 of the Indian constitution that no person

shall be deprived of his life or personal liberty. The right to livelihood is an integral facet of to right to life. So, according to this right to livelihood is violatingviolated by sexual harassment.

HOW LAWS ON SEXUAL HARASSMENT DEVELOPED OVER THE YEAR IN INDIA

Before 1997 if ,a female gender facing sexual harassment at workworkplacen she lodge a complaint under section 354 of the Indian penal code (1860) that section deal with the ‘criminal assault of women to outrage women’smodesty’ and section 509 that punishes an individual/individuals for using ‘word, gesture or act intended to insult the modesty of women. □ Landmark judgement of Vishaka case A PIL(public interest litigation) was filefiledagainst The state of Rajasthan by Vishaka and some women. Its was file because the women wanted to get enforced the fundament rights of working women under the three main article of India it is 14,19 and 21 of the constitution of India the reason behind file the petition was alady named Bhanwari Devi she was a social worker in Rajasthan, as she was a social worker so it was her duty to stop unjust in society one day when she was performing her task that is she trying to stop child marriage but she was brutally gang rape for doing the same. The Supreme court of India took the matter very seriously and created legally binding guidelinebased on the principle of equality and dignity mentioned in the constitution of India; it alsofound mewordn UN Convention on the Elimination of All forms of discrimination against Women (CEDAW).

The following guideline was:

- A duty was handed over to the Employer and other responsible persons to make sure that prevent of the ct of sexual harassment committed by a person has been kept under check, andit alsomentionedn that all the steps should be taken which provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment.
- Sexual harassment includes such unwelcome sexually determined behaviour (Whether directly or by implication) as; (a) Physical contact and advances; (b) A demand or request forsexual favours; (c) Sexually-coloured remarks; (d) Showing pornography; (e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- All employers, whether they work in the public or private sector, appropriate stepsneeds tobe taken by them to prevent sexual harassment. The following step needs to be taken then:

- (a) The prohibition of sexual harassment discussed above should be notified, circulated and published in appropriate ways.
- (b) Rules/regulations provided by government and public sector bodies related to conduct and discipline should also include rules/regulations prohibiting sexual harassment and provide appropriate penalties in such rules against the offender.
- (c) It should be ensured that the appropriate work condition should be provided as far as work, leisure, health, medical and hygiene is concerned, and after that, it should also be ensured that women are not given a hostile environment in the workplace. And women should not be subjected to disadvantage as far as her employment is concerned.
- (d) Whenever such conduct takes place it is equivalent to an offence which is punishable under the Indian penal code then after this employer should ensure that he has made a complaint in front of the authority in accordance with the law. With this there is one thing which needs to be considered that there is no short of discrimination against victim being done when it comes to dealing with a complaint of sexual harassment. One privilege should be given to victims to have the option of getting the transfer of perpetrator or themselves done.
- (e) Where it is found that the act committed is of such a nature that it can be construed as misconduct according to the service regulations after this thing that proved disciplinary action should be taken against.
- (f) Liberty should be given to employees so that they can find themselves to file a complaint if anyone ever tries to sexually harass them.
- (g) Female employees should be taken care of in the sense that they should be notified at the earliest.
- (h) When a question comes on that a conduct committee comes under the ambit of an offence is it a breach of rules of the ? In view of following this procedure a complaint mechanism should be established in organisation so that redressal can be made of a complaint which is made caused by victim and one crucial aspect which is related to this is that the complaint should result within a specified time limit.

Amendment in Indian penal code (1860) after Nirbhaya Case in 2013 :

Section 354A. Sexual harassment is unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favours showing someone sexual images (pornography) without their consent, and making unwelcome sexual

remarks.

Punishment: up to three years in prison and a fine.

Section 354B. Forcing a woman to undress

Punishment: from three to seven years in prison and a fine.

Section 354C. Staring or capturing the image of a woman without her consent (voyeurism).

Punishment: 1st conviction- one to three years in prison and a fine. More than one conviction – three to seven years in prison and a fine.

Section 354D. Following a woman and contacting her or trying to contact her despite her saying she does not want contact.

Punishment: 1st conviction- up to three years in prison and a fine. More than one conviction, up to five years in jail, and a fine.

Guidelines to Act: Salient features of the POSH Act Scope:

Committees for complaints: An essential feature of the POSH Act is that it envisages a grievance redressal forum. The POSH Act requires an employer to set up an 'internal complaints committee (ICC) at each office or branch of an organisation employing ten or more employees to hear and redress grievances about sexual harassment. The ICC will be a 4-member committee under the Chairpersonship of a senior woman employee. It will include two members from amongst the employees, preferably committed to the cause of women or has experience in social work/legal knowledge, and a third party member (NGO, etc.). At the district level, the Government is required to set up a 'local complaints committee' (LCC) to investigate and redress complaints of sexual harassment from the unorganised sector or from establishments where the ICC has not been constituted on account of the establishment having less than ten employees or if the complaint is against the employer. The LCC has particular relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. A District Officer notified under the Act will constitute LCC. LCC will be a five-member committee comprising of a chairperson to be nominated from amongst eminent women in the field of social work or committed to the cause of women, one member from amongst women working in block/taluka/tehsil/municipality in the district, two members of whom at least one shall be a woman to be nominated from NGOs committed to the cause of women or a person familiar with the issues related to sexual harassment provided that at least one of the nominees should preferably have a background in law or legal knowledge.

The concerned officer dealing with the social welfare of women and child development shall be an ex officio member.

The Process for filing Complaints: A complaint of sexual harassment can be filed within a time limit of 3 months. This may be extended to another three months if the woman can prove that grave circumstances prevented her from doing the same. The Act has a provision for conciliation. The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent. However, this option will be used only at the woman's request. The Act also provides that monetary settlement shall not be made a basis of conciliation.

Further, if any of the settlement conditions are not complied with by the respondent, the complainant can return to the Committee, which will proceed to inquire. The Committee is required to complete the investigation within a period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer; as the case may be, they are mandated to take action on the information within 60 days. In case the complaint has been found proven. The Committee can recommend the provision of service rules applicable to the respondent or per the prescribed rules where such laws do not exist. If the allegation against the respondent has not been proved, then the Committee can write to the employer/district officer that no action needs to be taken.

- i. **Punishments:** The POSH Act prescribes the following penalties that an employer may impose on an employee for indulging in the act of sexual harassment:
Punishment prescribed under the service rules of the organisation;
- ii. If the organisation does not have service rules, disciplinary action, including a written apology, warning, reprimand, censure, withholding of promotion, pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the respondent's wages of the respondent respondents' wages also envisages payment of compensation to unhappy women. The compensation payable shall be determined based on:
 - i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved disgruntled employee;
 - ii. the loss of opportunities due to the incident of sexual harassment;
 - iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
 - iv. the income and status of the alleged perpetrator, and

- v. the feasibility of such payment in a lump sum or instalments. If the respondent fails to pay the sum above, ICC may forward the order for recovery of recover the sum as an arrear of land revenue to the concerned District Officer.

Employer's Duties and Obligations: In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, among other things, i. provide a safe working environment ii. display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee iii. organise workshops and awareness programmes at regular intervals to sensitise employees on the issues and implications of workplace sexual harassment and organise orientation programmes for members of the Internal Complaints Committee iv. treat sexual harassment as misconduct under the service rules and initiate action for misconduct. The employer is also required to monitor the timely submission of reports by the ICC. Suppose an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions. Suppose an employer fails to constitute an Internal Complaints Committee or does not comply with any requirements. In that case, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). Repeating the same offence could result in the doubled punishment and denudation of the entity or revocation of any statutory business licenses.

Non- disclosure of Identity of Victims: The Act prohibits disclosing the identity and addresses of the aggrieved woman, respondent and witnesses. However, justice information secured for any victim of sexual harassment under this Act without disclosing the identity can be disseminated.

CONCLUSION:

India is rapidly advancing in its developmental goals, and more and more women are joining the workforce. Recognising the right to protection against sexual harassment is an intrinsic component of protecting women's human rights. It is all a step towards providing women independence, equality of opportunity and freedom at work with dignity. Sexual harassment in the workplace is a social challenge that needs to be addressed. It is essential to enhance the awareness of employers and employees on the existence of forms of sexual harassment at the workplace, preventive measures, and legal framework for preventing and addressing

sexual harassment. Dissemination and awareness-raising activities should be regularly conducted and evaluated to improve best practices on addressing sexual harassment in the workplace and forewarn and inform of forms of sexual harassment to enable potential victims to avoid them. Enhancing training courses on sexual harassment and providing documentation or a handbook on preventing sexual harassment in the tin workplace can help combat it.

“While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman.”

CASE LIST

1. *Vishaka & Ors vs State Of Rajasthan & Ors on 13 August 1997*

At the outset, it is necessary to put forth the facts of the case in detail to render a better understanding. Firstly, there was an immediate cause responsible for initiating this fight for gender justice which was the case of the alleged brutal gang rape of a woman in a village in the State of Rajasthan. Bhanwari Devi, a social worker, was gang-raped for the noble act of preventing child marriage. Unfortunately, according to the insufficient evidence proving the crime, this criminal case was dismissed [1].

However, this incident gained momentum among various social activists and NGOs, enforcing the necessity for specific legislation against sexual harassment in the workplace in the light of Gender Equality. Subsequently, this writ petition was filed by certain social activists and NGOs under Article 32 on the ground of violation of Articles 14, 15 and 21 of the Constitution.

In considering the absence of domestic law regarding gender equality and protection from sexual harassment at the workplace, the Court formulated the guidelines and norms to be observed at all workplaces until the enactment of legislation under Article 32 for the enforcement of the Fundamental Rights of the Constitution. The court declared this as law under Article 141 of the Constitution. The Vishaka guidelines were prescribed.

2. *Medha Kotwal Lele & Ors vs U.O.I. & Ors on 19 October 2012*

A letter written by Medha Kotwal highlighted several individual cases of sexual harassment, stating that the Vishaka Guidelines were not effectively implemented. Converting the letter into a writ petition, the Supreme Court took the cognisance and undertook to monitor and monitor the implementation of the Vishaka Guidelines across the country directing State Governments to file affidavits emphasising the steps, they took to implement the Vishaka

Guidelines. The result showed a poor performance by a majority of the states. Thus, SC issued further orders to national organisations such as the Bar Council of India to respect and implement the Vishakha Guidelines. In its judgment, the Supreme Court observed that “the implementation of the Vishakha Guidelines has to be not only in form but also in substance and spirit to make the available safe and secure environment for women at workplace in every aspect and thereby enable working women to work with dignity, decency and due respect.” Not being satisfied with implementing the Vishakha Guidelines directed States to put in place sufficient mechanisms to ensure effective implementation of the Vishakha Guidelines. Finally, the Supreme Court asserted that in case of non-compliance or non-adherence to the Vishakha Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

3. *Mukesh & Anr. Vs v s State for NCT of Delhi & Ors.*

A 23-year-old trainee physiotherapist woman was brutally raped repeatedly by five adult men and a juvenile on the night of 16th December 2012 onto a moving bus in Delhi. She got attacked with an iron rod, due to which she had her intestines pulled out. Later, she died. The Bench unanimously passed the death penalty judgment on all.

The accused except the juvenile juveniles. The juvenile who was equally involved in the incident and raped, the woman was convicted and sentenced to three years in a reformation centre. This incident led to various legislative reforms in rape laws. After the incident, a panel was set up under the chairmanship of JS Verma, and as per the recommendations, Criminal Law (Amendment) Act, 2013 was passed, which provides for the amendment of the Indian Penal Code, 1860; Code of Criminal Procedure, 1973, Indian Evidence Act, 1872 and Protection of Children from Sexual Offences Act, 2012, about sexual offences-related laws. Act widened the scope of rape definition and provided for capital punishment in rape cases that cause the victim's death or leave her in a permanent vegetative state. The act also provides offences offence offences and offences to make laws more stringent.

4. *Seema Lepcha vs State of Sikkim and Others SC declared that;*

The state government shall give wide publicity to the notifications and orders issued by it in compliance with the guidelines framed by this court in Vishakha's case and the directions provided in Medha's case by getting the same published in the newspapers having maximum circulation in the State every two months. Every month, there is wide publicity on Doordarshan about various steps the government to implement the guidelines framed in Vishakha's case and the directions provided in Medha's case. Social welfare and the Legal Service Authority of

Sikkim shall also give wide publicity to the notifications and orders issued by the state government, not only for the government departments of the state and its agencies but also for private companies.

5. *Independent Thought vs Union of India and Anr.*

Independent Thought is an NGO that deals with child rights. It filed a constitutional validity of exception 2 to section 375 of the Indian Penal Code. The issues raised were, Whether sexual intercourse between a husband and wife, where she is between 15 and 18 years of age, would amount to rape and whether section 375, exception 2, is violative of the fundamental rights of a girl child... In judgment, Supreme Court has criminalised sexual intercourse with a minor wife between 15 and 18. The Court opined that exception 2 in section 375 is violative of Articles 14, 15 and 21 of the Indian Constitution, which allows intrusive sexual intercourse with a the girl below 18 and above 15 years on the ground of marriage. The sun Suction clause in Indian rape laws negate the very purpose of the Prohibition of Child Marriage Act;

it violates the provisions of the Protection of Children from Sexual Offences Act (POCSO) in the context of the age of consent and some other international conventions to which India is a signatory. Supreme Court has struck down section 375, exception 2 of the Indian Penal Code. Now, the law cannot protect a man who is engaged in sexual relations with his wife when she was between 15 and 18 years because irrespective of the status of a child, whether married or not, she will always remain a child.

6. *Apparel Export Promotion Council v. A.K Chopra*

In this case, the Supreme Court upheld the dismissal of a Delhi-based Apparel Export Promotion Council superior officer who was found guilty of sexually harassing a

A subordinate female employee at the workplace. Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that “sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones,

whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used to affect the employment of the female employee unreasonably interfering with her work performance and creating an intimidating or hostile work environment for her.”

Other cases:

- Sri Subrata Kumar Choudhury vs State Bank Of India & Ors on 3 September 2008
- Centre For Constitutional Rights ... vs State Of Kerala on 17 March 2022
- Shital Prasad Sharma vs State Of Raj And Ors on 6 April 2018
- Women In Cinema Collective vs State Of Kerala on 17 March 2022
- Nagaram Balakrishna vs State Of Ap on 23 March 2021
- Patel Rajendrakumar Natavarla vs State Of Gujarat & 3 on 7 January 2016
- Rashi vs Union Of India And Anr. on 4 December 2020

BIBLIOGRAPHY

Books:

- *Ritu Gupta, Sexual Harassment at Workplace, (Lexis Nexis, 2014).*

Articles:

- *Sexual Harassment at Work Place (Prevention, Prohibition and Redressal) Act, 2013.*
- *Convention on the Elimination of All Forms of Discrimination against Women, UNHR, (2015).*
- *Indigenous and Tribal Peoples Convention, 1989 (No. 169), International Labor*
- *Discrimination (Employment and Occupation) Convention, 1958 (No. 111), International Labor*
- *Vishaka Guidelines against Sexual Harassment Workplace*
<http://www.nitc.ac.in/app/webroot/img/upload/546896605.pdf>
- *The Protection of Women Against Sexual Harassment at Workplace Bill, 2010, PRS Legislative Research, (2013).*
- <https://www.livelaw.in/sexual-harassment-at-workplace-the-journey-of-the-law/>
- [https://www.advocatekhaj.com/library/bareacts/sexualharrasment2013/2.php?Title=Sexual%20Harassment%20of%20Women%20at%20Workplace%20\(Prevention,%20Prohibition%20and%20Redressal\)%20Act,%202013&STitle=Definitions](https://www.advocatekhaj.com/library/bareacts/sexualharrasment2013/2.php?Title=Sexual%20Harassment%20of%20Women%20at%20Workplace%20(Prevention,%20Prohibition%20and%20Redressal)%20Act,%202013&STitle=Definitions)
- <https://hbr.org/2020/05/why-sexual-harassment-programs-backfire>