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## Sexual Harassment of Women at Workplace

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*Sexual Harassment at the workplace is one of the reasons that make a healthy working environment excruciating. Sexual harassment is unacceptable sexual behavior, which can be expected to make a person feel miserable, humiliated, or intimidated. It can be physical, verbal, or written. It is widespread problem that mostly targets women in our society. It swindles women of their right to work, equality, and a code of conduct under the Indian Constitution under Articles 14, 15 & 21. Sexual harassment in the workplace is not just an unacceptable behavior but also a threat to the economy. Moreover, such situations create a sense of insecurity and anxiety for them. Besides disrupting their work environment, they are socially, personally, and emotionally disadvantaged. In offices or any other type of work, people urge for sexual favors in exchange for the opportunities they can grab. Often incidents of sexual harassment can have life-changing consequences, especially if they involve severe/chronic abuse, and/or retaliation against the victim who does not submit to the abuse, or who stands up and complains about it openly.*

*This article is dedicated to the issue of sexual harassment at the workplace providing insight on its effects, leading factors, the law in India relating to the concerned issue, and some suggestive remedies. The article is followed by case analysis of Vishaka<sup>1</sup> case which changed the scenario towards the issue.*

**Keywords:** *sexual harassment, vishaka guidelines, CEDAW, committee.*

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<sup>1</sup> *Vishaka & Ors v State of Rajasthan & Ors* (1997) 6 SSC 241

## INTRODUCTION

They say- Nowadays women are given equal opportunity to work but are they given a safe and substantial space for the same? Sexual Harassment in the workplace is a very delicate issue in modern society. Sexual harassment in the workplace is reflected by adverse actions or unwanted behaviors that result in discomfort, dishonor, resentment, or displeasure to others. The majority of these cases focus on women who get harassed, generally, by the men who work for the high position in the organization. Sexual harassment is more than just an outhouse, a compliment, an irreproachable flirtation, or an invitation to hang out. Workplace harassment is a discriminatory behavior that creates a hostile work environment. It can include verbal abuse, abuse of power, sexual harassment, and attacks such as unwanted touching. It has serious consequences for all employees, including job loss, hindered dignity, and psychological problems.

There have been many instances of sexual harassment in the workplace that are a clear explanation of what is similar to sexual harassment that is not provided by any law or regulation. Several cases have been filed with the Supreme Court of India in the form of Public Interest Litigations of various NGOs, activists, and others but none of them have resolved the matter in any way until the historic Vishaka case<sup>2</sup> which gave a clear definition of sexual equality and therefore punishable if it is within the meaning.

## EFFECTS ON WOMEN OF SEXUAL HARASSMENT AT WORKPLACE

Victims of sexual harassment can have significant psychological consequences, including anxiety, depression, headaches, sleep disturbances, weight loss or gain, nausea, low self-esteem, and sexual dysfunction. They also experience job-related costs: from job loss, low dignity, decreased job satisfaction to irreparable damage to human relationships at work.

Sexual harassment has a devastating impact, which undermines women's self-esteem in the workplace, while among men it reinforces the extremist views of female employees as sex objects. Women are forced to leave their jobs to look elsewhere for work and discouraged from

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<sup>2</sup> *Ibid*

looking for those jobs in the first place. Overall, sexual harassment creates a tense and unproductive environment for work and learning.

### **FACTORS RESPONSIBLE FOR SEXUAL HARASSMENT AT THE WORKPLACE**

We have found that women in all industries face many forms of harassment: some face sexual harassment that can escalate to a level of minor harassment, or more serious and widespread harassment that creates a hostile work environment that harms their working capacity. Many also experience sexual harassment, which is usually not sexual orientation and may not reach the level required to file a formal complaint. However, sexual harassment can strongly shape individual experiences, workplace culture and restrict women's access to other and more targeted opportunities and advances, advancing the masculine power structures traditionally. Sexual, verbal, and symbolic behavior is offensive and demeaning to women to strengthen, control, or adhere to a particular job.

The anatomy clearly shows that sexual harassment is perpetrated in all spheres of power and gender inequality, as well as often unconscious ideas that are deeply rooted in extremist ideas about gender roles. These traditional beliefs often shape our beliefs about who is right and who is right in our society. We have found that some of the causes of sexual harassment exist in a variety of ways across the industry, including gender inequality, racial inequality, legal status, and inefficient reporting systems.

### **LAWS IN INDIA GOVERNING SEXUAL HARASSMENT AT WORKPLACE**

Sexual harassment violates the fundamental rights of women. Equality under Article 14 of equality before the law and Article 15 which prohibits discrimination based on religion, race, caste, gender or place of birth, right to life, and the right to profess, practice, or carry on any occupation, trade, or business under Article 21 and its right to a safe environment free from sexual harassment under Article 19 (1) (g).

In 2013, major changes were made to the perception of sexual harassment within the Indian criminal justice system. The Criminal Law Amendment Act of 2013, inserted Section 354A of

the Indian Penal Code, 1860 which describes sexual harassment. The Indian Penal Code, 1860 also defines sexual harassment and other related offenses and imposes similar penalties.

- Section 294 deals with obscene acts and songs in a public place<sup>3</sup>.
- Section 354 deals with the Assault of criminal force to women with intent to outrage her modesty.
- Section 376 deals with rape.
- Section 510 deals with uttering words or making gestures that offend women's dignity.

Before the Vishaka guidelines were introduced, these women had to deal with sexual harassment in the workplace by filing a complaint under Sec 354 and 509 of the IPC.

Sexual harassment as we know it has become a global problem which is a form of violence against women. The international community has identified the protection from sexual harassment as a women's rights. All legal instruments dealing with this matter are set aside to protect life and liberty and these instruments have been used as a means of preventing and dealing with the matter. In India, until Vishaka's decision was issued, there was no law to deal with the matter, and guidelines that emerged as a result of the case were taken from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Constitution of India laid the foundations in the form of fundamental rights.

### **SUGGESTIVE REMEDIES TO IMPROVE THE SCENARIO**

Central and State governments must launch a campaign to identify erring institutions and organizations to punish them appropriately and to force them to follow the guidelines faithfully.

- Every employer should develop a clear Sexual Harassment Prohibition and Prevention policy that should be known to each employee in the organization.

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<sup>3</sup> The Legal State, 'Sexual Harassment In Online Workspace' (*Law Superior*, 10 February 2021) <<https://lawsuperior.com/sexual-harassment-in-online-workplace/>> accessed 20 June 2021

- A large number of reputable NGOs with a good reputation and valuable experience in their credit can play a major role in the area of spreading awareness for sexual harassment in the workplace.
- Public awareness through, conferences, seminars, TV shows, and other modes of media should be created on this very important issue of women's social life.
- Women workers should maintain good relations with their colleagues and senior officials. Their behavior should be such that it will not allow anyone to take advantage of their freedom.
- Women workers should complain of harassment when they see the first signs of harassment by perpetrators. It is always better to be on time than to rush for treatment after a long time.

### **CASE ANALYSIS OF THE LANDMARK VISHAKA CASE**

**Case Name:** Vishaka and Ors vs State of Rajasthan and Ors (1997)

**Petitioner:** Vishaka & Ors.

**Respondent:** State of Rajasthan & Ors

**Date of judgment:** 13 August 1997

**Bench:** J.S. Verma C.J.I., Sujata V. Manohar, B.N. Kirpal JJ.

**Citation:** (1997) 6 SSC 241; AIR 1997SC.3011

**Court:** Supreme Court

#### **Brief Facts**

Bhanwari Devi was a social activist since the year 1985 in a small village in Rajasthan. She was under a social development program at the rural level which was initiated by the state government of Rajasthan to stop child marriage at the village. As a part of her job, she protested to stop a child marriage at Ramakant Gujjar's family because of the arranged

marriage of year old infant. She protested but the marriage completed successfully. To take revenge for her act, she was boycotted from the community and in September 1992 she was brutally gang-raped by five men of the Gujjar community in front of her husband.

The police and doctors did not play their part as the doctor refused to survey her at the medical healthcenter and another doctor at Jaipur only made confirmations of her age without any medical reports. The police too dissuaded them to file the case and she was ill-treated at the police station even by lady constables. Her lehenga was demanded as a shred of evidence and she covered herself with the blood-stained dhoti of her husband and was also denied to spend a night at the police station.

Many female social workers and NGOs also gave them support. Persistent to seek the justice they filed a writ petition at the Supreme Court of India under the name "Vishaka" for the need of protection of women from sexual harassment at workplace. The High Court pronounced that it was an incident of gang raped conducted out of revenge.

**Issue of the case:**

The Supreme Court highlighted the urgency to prevent the sexual harassment of women at the workplace and the requirement to find suitable methods for the problem of gender equality through the judicial process.

**Contention of the parties:**

The documents do not provide contentions or arguments of the plaintiff and defendant parties separately or mentioned but there are few arguments brought into account while delivering the judgment. Some of the arguments brought up before the court are as follows:

The plaintiff party argued to take measures for gender equality and safety of women at the workplace. The sexual harassment of women shall be prevented at workplace through legislative measures. The case of *Nilabati Behera v. State of Orissa*<sup>4</sup> is referred. To promote

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<sup>4</sup> *Nilabati Behera v State of Orissa* (1993) 2 SCC 746

gender equality and prevent sexual harassment at the workplace the articles 14, 15, 19(1) (g), and 21 of the constitution should be brought to light.

The international norms are to be read which are not inconsistent with the spirit of fundamental rights. The case cited for its support is *Minister of Immigration and Ethnic Affairs v. Teoh*<sup>5</sup>.

**Articles that are violated:**

- Article 14: equality before the law.
- Article 15: the right to no discrimination based on caste, race, religion, and birth.
- Article 19(1) (g): the right to practice one's profession and carry on any occupation, trade or, business.
- Article 21: the right to life.

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup>:**

- Article 11 (1) (a, f): the right to work and right to protection of health and to safety in working conditions, including the safeguarding of the functions of reproduction.
- Article 24: the state shall undertake all necessary measures at the national level aimed at achieving the full realization of the rights.
- General Recommendation No. 19: on the elimination of violence against women.

**Judgement:**

The judgment was pronounced by Chief Justice J.S Verma. The court observed that it is a violation of the right to life and the right to a dignified life. It violates the article 14, 15 and 21. Sexual harassment also infringes the right given in Article 19(1) (g). The major element of providing a safe and secured working place to women should be available.

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<sup>5</sup> *Minister of Immigration & Ethnic Affairs v Teoh* 128 ALR 353

<sup>6</sup> Kavisha Gupta, 'Supreme Court Case Analysis: Vishaka and Ors v. State of Rajasthan and Ors' (*Latestlaws*, 28 May 2018) <<https://www.latestlaws.com/articles/supreme-court-case-analysis-vishaka-and-ors-v-state-of-rajasthan-and-ors-by-kavisha-gupta/>> accessed 22 June 2021

The Supreme Court laid down various guidelines for the employees to prevent sexual harassment at the workplace and provide a secured environment. The court also suggested that there should be no discrimination against women in the workplace and promotion of gender equality. Some techniques were suggested for implementation to work towards women's security in the workplace.

After due observance and in the absence of gender equality and any legislative measure against women safety against harassment and abuse certain norms were set up in the light of Article 141 and Article 32 of the Indian Constitution. It also defined the term sexual harassment after this case as any physical touch or conduct, showing of pornography, any unpleasant taunt or behavior, or any sexual desire towards women, sexual favor will fall in sexual harassment. Certain guidelines were laid by the court which was simply called '*Vishaka Guidelines*'<sup>7</sup> to be followed by the employer and employee which were later incorporated into Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013.

- Sexual Harassment consists of unwelcome sexually determined behavior as well as sexual contact, sexual favor and remarks, pornography, and also verbal and non-verbal conduct of sexual nature.
- Sexual Harassment at the workplace should always be informed, produced, and circulated.
- Whenever sexual harassment takes place which amounts to a specific offense under the law, the employer should take action by complaining about the same to an appropriate authority.
- An appropriate mechanism of prevention should be created for redressing the complaint.
- Formation of complaint committee at the workplace.
- Such a committee has to be headed by a women employee and also includes NGO or third-party interference.
- Half of the members should comprise of women.

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<sup>7</sup> Ms. Mariya Paliwala, 'Vishaka Case, 13 August, 1997 - Case Analysis' (*FastForward Justice*, 22 August 2018) <<https://fastforwardjustice.com/vishaka-case-13-august-1997-case-analysis/>> accessed 23 June 2021

- Complaints regarding sexual harassment should be informed to this committee and action against such crime has to be initiated by the employer under the concerning crime.
- The committee would advise the victim for further action in this regard.

## **ANALYSIS OF THE CASE**

It is one of the prominent cases in the history of India. Through the Vishaka Case, the Supreme Court of India took a major step in empowering women by issuing guidelines to prevent sexual harassment in the Workplace. The Court took the lead in various international conventions and laws in the absence of domestic law, then linked it to national law and gave birth to a completely new law. The efforts made by the Indian courts, in this regard in protecting women, are commendable. The Honorable Court through Vishaka's guidelines has provided a strong legal basis for all women to fight sexual harassment with courage. Vishaka's case has changed the way sexual harassment is viewed as a serious matter, unlike in the past when such cases were considered trivial.

As every implication has two sides, according to Vishaka's case, one can see that although India has tried to overcome the social evils of gender inequality and sexual harassment by providing employment and legal provisions, it has not succeeded in taking public responsibility for an equally safe working environment. Even after our law protects women, many incidents of sexual harassment go unreported.

## **CONCLUSION**

Sexual harassment and gender equality of women in the workplace is a very sensitive topic. Sexual harassment is an evil act prevailing in India for many decades despite laws made for it. Vishaka guidelines are one of the masterpieces of law enacted by the Supreme Court guaranteeing the prevention of sexual harassment of women. Sexual harassment deprives women to live a respected and dignified life and violates their rights. The court analyzed the importance of the matter and read international law with CEDAW which shows the flexibility

of the judiciary. The Supreme Court got the authority for this in article 253 read with entry 14 of UnionList in Seventh Schedule.

Women constitute the working population of our country and this judgment promoted a more secure environment so that no women hesitate to make her career outside the house. The judgment allowed more women to raise their voices regarding the issue. Lack of any domestic law in regards to sexual harassment didn't give a platform to raise such issues. The rights of both men and women should be equal and safe in a democratic country like India thus this judgment fulfilled its objective and laid norms and guidelines to achieve its purpose of promoting gender equality at the workplace and preventing sexual harassment of women at the workplace thereby providing secured working environment.