



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Sexual Harassment at workplace in India

Shubham Singh<sup>a</sup>

<sup>a</sup>National Law University, Odisha, India

*Received* 24 November 2021; *Accepted* 14 December 2021; *Published* 20 December 2021

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*Sexual harassment in the perspective of laws and morals is a wrong thing. Morality creates a base for most of the laws, so it does in sexual harassment laws. This Short article will try to explain the sexual harassment laws at the workplace in India not from logic but from a moral point of view with understanding the laws in depth and their evolution from the past, till now and also the moral concern that are still there in the laws. It will also cover the mentality of wrong-doer and people who get harassed and the events that help sexual harassment to be defined legally in India.*

**Keywords:** *morality, sexual harassment, workplace.*

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### INTRODUCTION

Morality means principles concerning what is good or bad. Law and Morality are closely related to each other as laws are generally based on morality. Laws are there to promote morals and it provides a way to a moral life. When people cannot identify what is wrong or right, the law is there to help them identify the wall between good and bad. So, the law is a mean to uphold morality as morality is a rule of right conduct and laws helps to enforce those rules. Laws are also there to punish people who don't conduct right and try to go against morality.

## SEXUAL HARASSMENT

Sexual Harassment means harassing a person sexually by verbal or physical or visual or maybe three of them without their consent and making them uncomfortable. Mostly it is done by a person who is higher in authority from the person who is getting harassed in the home, workplaces, events and other places as the harassers abuse their power of authority and try to oppress the harassed with their so that they can't come out for help. Harassment of any kind is morally wrong because it creates a disturbance in a person's life, so does Sexual Harassment.

As it is morally wrong, it is automatically a crime in front of laws. Law is dynamic and still evolving. Some laws help a person to fight against sexual harassment like

- The Indecent Representation of Women (Prohibition) Act, 1987<sup>1</sup>
- International Conventions on laws against sexual harassment.<sup>2</sup>
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>3</sup>
- Indigenous and Tribal Peoples Convention.
- PoSH Act, 2013.<sup>4</sup>

These are some of the laws and acts that are produced internationally and domestically (India) to prevent these sexual harassment.<sup>5</sup>

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<sup>1</sup> Indecent Representation of Women (Prohibition) Act 1986

<sup>2</sup> Romana Asmat and Sidra Mehboob, 'International Laws and Policies for Addressing Sexual Harassment in the Workplace' (2016) 2(2) IRJIMS < <http://oaji.net/articles/2016/1115-1460723528.pdf> > accessed 12 November 2021

<sup>3</sup> UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 19' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (29 July 1994) UN Doc HRI/GEN/1/Rev.1

<sup>4</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

<sup>5</sup> *Ibid*

## OBJECTIVES OF THESE LAWS

**The Indecent Representation of Women (Prohibition) Act, 1987<sup>6</sup>** - It prohibits the indecent representation of women in ads, publications, writings, paintings, figures, or any other medium, as well as for matters related to or incidental to this prohibition.<sup>7</sup>

**International Conventions on laws against sexual harassment** - These laws are made by different international organizations like the United Nations, International Labour Organization, and Charter of Fundamental Rights of the European Union, etc. to fight against sexual harassment all around the world and tell the world about the problem of sexual harassment.

**CEDAW** - It was adopted by the UN. It follows the rule of equality between men and women in their legal and abolishes all the discriminatory rules against women.

**PoSH ACT, 2013<sup>8</sup>** - PoSH ACT, 2013 was introduced for women's safety from different sexual harassment including at the workplace. It was introduced after the vishaka guidelines.<sup>9</sup>

## SEXUAL HARASSMENT AT WORKPLACE IN INDIA

Sexual Harassment is mostly done by the person higher in authority in the workplace. Two major terms that are prominently used to describe it are:

- **Quid Pro Quo**
- **Aggressive Work Environment**

**Quid Pro Quo** - It means 'this for that.' It is one of the major ways of harassing a person in the workplace. Understanding it with an example - An Employer promises an employee to get them promoted or do the favor and ask them to have a sexual relationship even without their will or harass them, again and again, doing whatever they want to get sexual exchange from

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<sup>6</sup> Indecent (n 1)

<sup>7</sup> *Ibid*

<sup>8</sup> PoSH Act 2013

<sup>9</sup> *Ibid*

them by showing power they hold in the workplace, which makes a harassed person to keep quiet about what they are doing to them.

**Aggressive Work Environment** - As the name suggests creating an aggressive work environment at the workplace means discrimination against a person or humiliating them which makes them feel uncomfortable and unsafe. In this, an Employer or a Co-worker intentionally tries to cut the victim from others or make them feel low from others, or discriminate them on genders and other factors.

Sexual Harassment is made of small- small types of immoral things like discrimination based on race, caste, gender, etc. and thought of having authority over a person as they are working under you which should not be accepted by us but still are ignored daily as we are used to it. Laws are there against all of these as they are immoral but even after that people try to adjust to these immoral actions or they don't have knowledge which created a problem of a big level like Sexual Harassment in society.

## **EVENTS AND LEGAL RECOGNITION OF SEXUAL HARASSMENT AT THE WORKPLACE AS A MAJOR ISSUE IN INDIA**

Sexual Harassment at the workplace was a major issue for Women in India. There were no women-centric Laws available in the past but after Vishaka Judgement<sup>10</sup> a drastic change was seen in the laws for women.<sup>11</sup> In *Vishaka & Ors. vs State of Rajasthan & Ors (1997)*<sup>12</sup>, a woman named Bhanwari Devi was in Women's Development Project Rajasthan. As a part of her employment one day, she get to know that an infant girl was getting married and she tries to stop that. She failed as the villagers went against her and even the police didn't help her. She tried every sort of campaign too but was unsuccessful. To take revenge for the rallies and other things she did to stop the marriage a group of people attacked her and raped her.

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<sup>10</sup> Pranav Sethi, 'Case behind The Development Of The POSH Act Of 2013' (*Ipleaders*, 25 June 2021) <<https://blog.ipleaders.in/case-behind-development-posh-act-2013/>> accessed 12 November 2021

<sup>11</sup> *Ibid*

<sup>12</sup> *Vishaka & Ors v State of Rajasthan & Ors* [1997] 6 SCC 241

Bhanwari Devi filed a rape lawsuit against those people. Police officers and other law enforcement personnel didn't take her seriously.<sup>13</sup> Police spent 52 hours submitting the complaint. Furthermore, the Trial court acquitted all of the accusers. This created a movement around India and women and NGOs working for women were angry about it. A writ petition was filed by Bhanwari Devi with other female social workers.<sup>14</sup>

The judgment from the Hon'ble Supreme court was that Fundamental rights are violated of women who works, under article 14, 19, and 21 of the constitution of India. There should be an increase in awareness about gender justice. For the first time, Sexual Harassment was defined by the Supreme Court and for the first time, the international rules were used to do provisions in fundamental rights. Rules of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** were used.<sup>15</sup>

#### **Features of vishaka guidelines:**

- The definition was provided of Sexual Harassment.
- Working Environment should be Safe.
- Employers have to file a complaint if made by an employee.
- A complaint reviewing committee should be there.
- Employer to assist the employee if she is sexually harassed
- Duty of employer to spread awareness.
- Duty of government to widen the scope of these guidelines.<sup>16</sup>

The time taken by the case and the ways people tried to hold on to this topic of sexual harassment are too high. This confirms a point of some people in higher authority using their power in an immoral way not only for sexual harassment but for their safety from their immoral acts. Addressing Vishaka guidelines and the act of sexual harassment. Sexual harassment was there but was not legally defined until the case of Vishaka & Ors. vs State of

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<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

Rajasthan & Ors<sup>17</sup> (1997) happened. Vishaka guidelines on the other hand was a great introduction and laws from it were effective to stop sexual harassment at the workplace but had their flaws as most of the things were not defined precisely.<sup>18</sup>

### THE NEW AND STRONG ACT AGAINST SEXUAL HARASSMENT

PoSH ACT, 2013 - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and redressal) Act 2013 bill was passed in light of Development in Vishaka Guidelines. ThePoSH Act added was an in-depth version of Vishaka Guidelines and has defined more regarding things that were just touched in Vishaka guidelines.<sup>19</sup>To understand the Depth here is a difference between Vishaka Guidelines and PoSH, Act, 2013.

	<b>Vishaka Guidelines</b>	<b>PoSHAct, 2013</b>
Organization scope	The guidelines covered only government jobs, Public sector jobs, and Private Sector Jobs.  There is no in-depth talk on NGOs and other types of works and jobs.	This Act covers almost all kinds of jobs and has in-depth talk about the workplaces.
Protection	It only talked about the employee. It didn't	Definition of 'employee' was wider in scope in this act. The temporary employees, people doing work as

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> 'Vishaka Guidelines vs Prevention of Sexual Harassment, ASH Act 2013 And Real Life Court Room Cases!!!' (*kelpHR*, 28 November 2016) <<https://www.kelphr.com/blogs/vishaka-guidelines-vs-prevention-of-sexual-harassment-ash-act-2013-and-real-life-court-room-cases/>> accessed 12 November 2021

Limits	Covered intern and trainee aspects.	an intern also got protection and were provided with the power of going to the complaint committee. <sup>20</sup>
Workplace	It did not state in detail that what makes a 'workplace'	The workplace was defined here as- "any place visited by the employee in course of employment (including transportation provided by the employer) is also included within its definition". It was an expanded definition but make the application of rules difficult in a few circumstances. <sup>21</sup>
Employers Duty.	There was only the introduction of the Complaint Committee and the duty to provide redressal other than that there were no important obligations. Training of Employees and sensitization duties were not of extreme importance.	This act requires that all the duties of the organization mentioned in the act must comply with or there will be serious consequences. Training of Employees and sensitization duties were of extreme importance. This act also asks organizations to create complaints committees and train the members of the committee. The committee must put out annual reports and short notices.

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<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

Grievance Redressal	Organizations had their grievance mechanism as there were no technical requirements laid in this act to make the mechanism.	For redressal, an ICC must be constituted every year as per the guidelines of the act which should have an external member who knows the skills, it must also include an appropriate number of female members. <sup>22</sup>
Inquiry	In these guidelines, no detailed guidelines were given regarding the inquiry process but it was just time-bounded.	This Act has in-depth guidelines for the inquiry process - the inquiry must be finished in 90 days with specific steps in that timeline. There were limits on every stage.

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<sup>22</sup> *Ibid*



<p>Harassment Remedies</p>	<p>Disciplinary action was to be taken against the accused if he is guilty of sexual Harassment. No compensation.</p>	<p>Many remedies are provided under this Act. Disciplinary action like stopping the promotions and salary. ICC may provide short-time relief like transferring the accused or the victim from the place till the decision is pending.<sup>23</sup></p>
<p>Powers of ICC</p>	<p>Internal Complaints Committees were not provided with powers (apart from disciplinary action).</p>	<p>To enforce the attendance of the victim and accused and evidence like voice recording. ICC has Civil court powers. They can provide options like settlement between the parties if certain criteria are fulfilled.</p>
<p>Appeal</p>	<p>No appeal can be filed against the decision made by ICC.</p>	<p>An appeal can be filed as per rules under Industrial Employment (Standing orders) act.</p>
<p>Settlement</p>	<p>No settlement mechanism was provided.</p>	<p>This Act allows facilitation of settlement by ICC under certain circumstances.<sup>24</sup></p>
<p>Non-</p>	<p>No specific punishment was stated in</p>	<p>This act imposes a fine and in</p>

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<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

Compliance punishments.	the guidelines.	severe situations business license cancellation. <sup>25</sup>
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## CONCLUSION

The biggest flaw that came out of this act was it was not gender-neutral. In the modern time when people are fighting against discrimination, the law didn't develop from the perspective of other genders. From the development from Vishaka guidelines to PoSH Act, 2013 there have been major changes but mostly they are regarding a particular gender. The problem is of mentality that we have which also affects morality and that affects the laws. The mentality of non-vulnerability of other genders causes these kinds of problems. There are laws for other genders to but are limited and because of the Indian mentality, the people of other genders didn't try to fight against them.

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<sup>25</sup> *Ibid*