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Timeline of the POSH Act, 2013

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Since time immemorial, women have been exploited in India, whether it be economic, mental, physical, social, or sexual level, this has been done time and again because of the primitive religious norms and customs or social norms which have accompanied for a very long time. Women are not safe even in their homes. They have to live in constant fear. With the coming of the new period, women have entered the corporate world where they work with educated and intellectual people and still aren't safe from harassment. Even the enactment of the Prevention, Prohibition, and Redressal Act, 2013, which was done to protect women from sexual harassment has not brought any major changes. It is high time that we understand the importance of this act and start abiding by the rules to protect our women who we worship according to our traditions but still they have been subject to such behaviour. With the larger influx of women in the mainstream workforce of India, sexual harassment in the workplace has assumed greater dimensions.

Keywords: *sexual harassment; prevention, prohibition.*

INTRODUCTION: HISTORY BEFORE POSH ACT 2013

The Indian Penal Code, 1860, was the only statutory remedy in place before the emergence of the POSH Law that dealt specifically with workplace sexual harassment. The Indian Penal Code only has the following clauses that apply to sexual harassment:

- Section 354¹ (Outraging the modesty of a woman) and
- Section 509² (Insulting the modesty of a woman).

Women who experienced sexual harassment at work had to report the incident to the police. The Indian Penal Code applied in the case of *Rupan Deol Bajaj v K.P.S. Gill*³ in which a superior officer sexually harassed a senior IAS officer and the High Court decided that the IPC's inadequate provisions under Sections 354 and 509 were insufficient. It was clear that there was a vacuum in the law and that there needed to be more changes regarding sexual harassment. The Supreme Court overturned the *Rupan* case, ruling in light of situations like these. The unfortunate incident with Bhunwari Devi finally addressed the matter of workplace sexual harassment. She was a social worker for the state of Rajasthan's Women Development Program in 1992. She attempted to avert a child's marriage while she was on duty. A group of males from the ruling caste society who took part in the child marriage ritual viciously gang raped her. In 1997, the case *Vishaka v the State of Rajasthan*⁴ and others was brought before the Supreme Court of India to draw attention to this incident. The Supreme Court issued some rules that were in effect until a whole statute covering sexual harassment in the workplace was placed into place when it recognized that Indian women faced sexual harassment at work as a consequence of a lack of a framework. The "Vishaka Guidelines" were a set of rules that defined sexual harassment, addressed it with disciplinary measures, and established a complaints commission to look into sexual harassment claims.

THE VISHAKA JUDGEMENT

For the first time, the Supreme Court recognized the apparent legislative shortcomings and recognized workplace sexual harassment as a violation of human rights. The Convention on the Elimination of All Forms of Discrimination against Women, enacted by the General Assembly of the United Nations in 1979 and accepted by India, served as the foundation for the Vishaka Guidelines. According to the Vishaka Judgment, until a legal framework on the

¹ Indian Penal Code 1860, s 354

² Indian Penal Code 1860, s 509

³ *Rupan Deol Bajaj v K.P.S. Gill* (1995) AIR 309

⁴ *Vishaka v the State of Rajasthan* (1997)

subject has been developed and adopted, the Vishaka Guidelines published under Article 32⁵ of the Constitution will have the force of law and must be strictly adhered to by organizations in both the commercial and public sectors.

“As per the Vishaka judgment, ‘Sexual Harassment’ includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a. Physical contact and advances

b. A demand or request for sexual favours;

c. Sexually coloured remarks;

d. Showing pornography;

e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension about the victim’s employment or work (whether she is drawing a salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.”

OTHER JUDGEMENTS AFTER VISHAKA CASE

The Vishaka decision opened up a national conversation about workplace sexual harassment and brought a long-dormant problem into the open. The case of Apparel Export Promotion Council v A.K. Chopra was the first one brought before the Supreme Court in this regard following Vishaka. The Supreme Court reaffirmed in this instance the Vishaka Judgment's legal guidelines and supported the removal of a senior officer of the Delhi-based Apparel

⁵ Constitution of India 1950, art 32

Export Promotion Council who was convicted of sexually harassing a subordinate, a woman, working there. According to this assessment, The Supreme Court broadened the meaning of sexual orientation. By declaring that physical contact constitutes harassment, it doesn't need to be a sexual activity for it to count as such harassment. Another case was *Medha Kotwal Lele & Ors. v Union of India & Ors.*⁶ In this case, according to a letter from Dr. Medha Kotwal of the NGO Aalochana, the Vishaka Guidelines were not being adequately followed because of several specific instances of sexual harassment. The Supreme Court acknowledged receipt of the letter and, after converting it into a writ petition, ordered state governments to submit affidavits outlining the actions they had done to put the Vishaka Guidelines into effect nationwide. It instructed states to set up appropriate measures to guarantee the Vishaka Guidelines are implemented effectively after being dissatisfied with how they had been done thus far. Finally, the Supreme Court stated that the harmed parties would be free to approach the relevant High Courts if the Vishaka Guidelines were not followed.

POSH ACT, 2013

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. It has its foundations in the Vishaka Guidelines and establishes a mechanism for dealing with sexual harassment complaints in the workplace. Under the POSH Act:

- The person who can file a complaint has to be a woman, the POSH Act is not gender neutral.
- Any workplace with over 10 employees should have an Internal Committee (formerly known as the Internal Complaints Committee), which will deal with a sexual harassment complaint.
- When a complaint is filed, the Internal Committee (IC) will conduct an inquiry and forward their recommendations to the employer with respect to their finding of guilt or innocence, and the consequences of the same.

⁶ *Medha Kotwal Lele & Ors. v Union of India & Ors* (2012) Writ Petition (Criminal) Nos. 173-177/1999

PUNISHMENTS AND COMPENSATION

An employer may punish an employee in the following ways for engaging in sexual harassment in accordance with the POSH Act:

- The punishment prescribed under the organization's service rules;
- In the absence of service rules in the organization, disciplinary action may include a written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increment, terminating the respondent from service, undergoing a counselling session, or performing community service; and
- Reduction of the respondent's wages to pay compensation to the aggrieved woman (Section 13 of the POSH Act).

The POSH Act, in accordance with Section 15⁷, also provides for compensation for aggrieved women. In determining compensation, the following factors must be taken into account:

- Affected employee's mental trauma, pain, suffering, and emotional distress;
- The loss of career opportunities caused by sexual harassment;
- Physical and mental health treatment expenses incurred by the victim;
- Whether the alleged perpetrator has a high income or a high status; and
- Whether lump sum or installment payments are feasible.
- A failure by the respondent to pay the aforesaid sum will result in the IC forwarding the order of recovery to the District Officer concerned.

DRAWBACKS OF THE POSH ACT

The Act has a number of flaws and gaps that have developed over time and keep it from reaching its full potential at this time. Women continue to suffer because of this legislation's weakness and insufficiency. It is crucial to find and correct these disparities. The important issues are as follows:

⁷ POSH Act 2013, s 15

Gender neutrality - Other employees who could experience sexual harassment at work are not specifically protected by the Act. According to Section 2(a)⁸ of the Act, a woman who complains that she was the victim of sexual harassment qualifies. It is against the law to harass a woman at work, according to Section 3⁹. Therefore, by restricting its application to women alone, this Act eliminates the option of recourse for complaints made by men or LGBTQ+ individuals. The idea of equality in the workplace is poisoned by the existence of a biased law, which continues the long-standing caricature of a male harasser and a female victim. Therefore, it is imperative to propose a gender-neutral regulation requiring employers to have proper practices for dealing with sexual harassment by both males and members of the LGBTQ+ community.

Limited recourse for women in the informal sector - In 2020, Human Rights Watch issued thorough research outlining the Act's shortcomings for women working in the unorganised sector. The research talks about how many workers believe their sexual harassment episodes are "minor," and they would be better off ignoring them than taking part in a drawn-out legal process that frequently falls short of meeting their demands. It is particularly regrettable that the Act does not address complaints from women who work in the unorganised sector.

Procedural and technical drawbacks of the POSH Act - The Act cannot be completely implemented because of a number of technicalities. According to Section 9's rules, sexual harassment victims have three months from the incident to register a complaint. If the Committee is persuaded that special circumstances prohibited the victim from filing their complaint by the deadline, an additional three months may be given. Additionally, the Act does not permit anonymous complaints.

WORK FROM HOME IN THE COVID-19 ERA AND THE POSH ACT

The COVID - 19 pandemic has left offices vacant, and our comfortable couches are now the latest victims of our work woes. The fundamental definition of "sexual harassment at work" has been questioned by the unique idea of "work from home," sometimes known as "WFH."

⁸ POSH Act 2013, s 2(a)

⁹ POSH Act 2013, s 3

Our workplaces are no longer monitored by CCTV cameras, nor are HR and IC superstructures constantly on guard. Today, our desktops are inundated with Zoom conversations and Google Meets, and our phones are ringing nonstop with follow-up emails and texts. This has allowed a lot of sexually questionable behaviour to come to the surface. Work from home has always been covered by the POSH Act. The term "workplace" is defined in Section 2(o)¹⁰ of the POSH Act to include both "a living place or a house" and "any place visited by the employee arising out of or during the course of employment." Employees are therefore still subject to the previous Code of Conduct, Service Rules, and POSH Act regulations, which place obligations on them to refrain from engaging in sexually harassing behaviour against coworkers or third parties they deal with through the present online meetings. Data from the National Commission for Women show that after the lockdown, there were more crimes against women. The majority of complaints involve claims of harassment or discrimination, such as requests for video calls at strange hours, snapping pictures, social media stalking by coworkers, and sending improper messages on personal phones. As a result, it is crucial to have your POSH procedures applied to work-from-home scenarios as well. It should be emphasized that work from home is included in the concept of an "extended workplace" for the purposes of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013).

CONCLUSION

The difficulties in ensuring security have grown in the virtual reality era, where progress has taken centre stage. Therefore, it is imperative to expand the reach of laws as well. One such law, the POSH Act, has been given a broad interpretation by the court, expanding its scope of application. The law now considers sexual harassment that takes place on an online forum to be a crime. Instead of adhering to the archaic definition, the dynamics of the term "workplace" have changed to be more inclusive in character. Such an interpretation has opened up new perspectives on workplace harassment and given safer workplaces additional dimensions. The POSH Act should clarify applicability, accountability, implementation, and monitoring in

¹⁰ POSH Act 2013, s 2(o)

order to promote improved reporting. To attain high workplace productivity, it is critical that employers and authorities adapt, put into practice, and promote best practices for identifying and responding to workplace harassment. Promoting activities that raise awareness and support prevention efforts is the greatest method to stop such unfavourable working conditions.