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An Overview of Women Rights in the workplace in India

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According to Article 15(1) of the Constitution of India states, "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth, or any of them", and Clause 3 states, "Nothing in this article shall prevent the state from making any special provision for women and children." [1]*The VISHAKA GUIDELINES were stipulated by Supreme Court after the case of Vishaka and others v State of Rajasthan (1997)*[2]*. The judgement, in this case, was given by J.S. Verma and the bench of judges defined sexual harassment in the workplace against women. This case proved to be a landmark success on the part of women who wished to work and be independent. In today's era, women are the bread earners of their families and still facing challenges. Five laws that women should know and use as a sword in case of any discrimination at the workplace: Law against sexual harassment, Law for maternity leave, Law for factory workers, Law for equal pay, and Law protecting women who work night shifts*

Keywords: *sexual harassment, feminism, maternity leave, gender equality, reputational risk, equal pay.*

[1] Constitution of India 1950, art. 15
[2] *Vishaka & others v State of Rajasthan* [1997] 6 SCC 241

INTRODUCTION

"We need women at all levels, including the top, to change the dynamic, reshape the conversation, to make sure women's voices are heard and heeded, not overlooked and ignored."

- Sheryl Sandberg

In India females are worshipped, whenever a girl child takes birth, she is said to be an incarnation of the goddess Laxmi. But the harsh reality is, even in ancient times females were treated as a doormat, and still in the 21st century the condition is not at par. Women are said to be fighters as from the time of birth to death they are struggling and fighting for their rights. Initially, girl child fights to come into this world as most of the time they are killed on the pretext of female foeticide. Then she struggles to get the basic education and basic amenities. After all this hustle she still strives to find a respectable place and social status in society. Women have marked their achievement in nearly every sector whether in politics, medicine, defence services, or the corporate sector. To celebrate the cultural, socioeconomic, and political achievements of women, International Women's Day is observed globally on March 8th annually. Women are unsafe in their houses as well as at their workplaces, despite various provisions they are still being made to feel unworthy. The Constitution of India protects the rights of women by treating them as equals and providing measures and remedies.

BASIC TERMINOLOGY

- ***Sexual Harassment*:**

Includes any one or more of the following unwelcome acts or behaviour namely:

1. Physical contact and advances; or
2. A demand or request for sexual favours; or
3. Making sexually coloured remarks; or
4. Showing pornography; or

5. Any other unwelcome, physical, verbal, or non-verbal conduct of sexual nature.[3]

***Workplace*:**[4]Any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for Commutation. "Any place visited "includes visiting a place virtually and shall come in the ambit of the workplace as ordered by Rajasthan High Court dated 11 January 2021.[5]

***Ex- Parte*:** This refers to a judgement handed out by the IC in the absence of one of the parties involved in the complaint.

***Conciliation*:** The complainant can raise the request for conciliation. This refers to a voluntary resolution upon mutual agreement by both parties.

***Internal Complaints Committee*:** The internal Complaints Committee is formed to receive and look after the redressal process of sexual harassment complaints under the POSH Act. The committee consists of a minimum of four members:

- The presiding officer must be a woman chosen from amongst the employees of the workplace.
- Two other employees with experience in social work or dedicated towards the cause of women.
- An external member who belongs to a non-governmental organization or someone who has experience working for the cause of women.[6]

BACKGROUND

Pre-Vishaka Scenario: In India, until the Vishaka judgement came the women had to file the case of sexual harassment at the workplace in the Indian Penal Code, 1860 under:

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[3] Neha Rajan Redekar,' POSH- Sexual Harassment of Women at Workplace' (*Tax Guru*, 20 November 2021) <https://taxguru .in/corporate-law/posh-sexual-harassment-women-workplace.html> accessed 15 October 2022
[4] 'Does definition of workplace in POSH law include Virtual workplace' (*POSH at Work*, 30 January 2021) <https://poshatwork.com/workplace-in-posh-law-include-virtual-workplace> accessed 16 October 2022
[5] *Sanjiv Mishra v Disciplinary Authority and General Manager, Bank of Baroda & Ors* Writ Petition (Civil) 150/2021
[6] Neha Rajan Redekar (n 3)

- Section 354 deals with criminal assault of women, to outrage women's modesty.
- Section 509 punishes an individual for using a word, gesture, or act intended to insult the modesty of a woman.
- Sexual harassment is a kind of violence against women and it is a global issue.

Vishaka & Ors *v* State of Rajasthan (1997): Bhanwari Devi, Rajasthan: State Government employee, tried to prevent child marriage as part of her duty as a worker of the Women Development Program. She was raped repeatedly by the landlords of the Gujar community for taking a stand against the feudal patriarchs. She did not get justice from the Rajasthan High Court and the rapists were allowed to go free. This inspired several other women and NGOs to file a petition in the Supreme Court under the collective platform of Vishaka.

Post–Vishaka Scenario: India did not have any legislation till the Bill for Protection of Women from Sexual Harassment was moved in the Parliament in the year 2005. Finally, in 2013, India enacted its law on the prevention of sexual harassment against female employees in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 was made effective on 23 April 2013 by way of the Gazette of India. This Act replaced the Vishaka guidelines instituted by the Supreme Court of India.

FEATURES OF VISHAKA GUIDELINES

- Provide a safer working environment to women.
- It is the duty of the employer to file a complaint if the conduct towards an employee amount to an offence of criminal nature.
- Mandatory for all organizations to set up complaint redressal committees.
- In case the employee is sexually harassed, the employer shall assist her.
- It is the duty of the employer to spread awareness in his organization regarding the safety of women and matters related to sexual harassment.

VARIOUS LAWS FOR WOMEN IN THE WORKPLACE

***Equal Remuneration Act, 1976*:** All males and females at a workplace are to be paid equal remuneration for work of the same or similar nature. There shall be no discrimination on the ground of sex in case of transfers or promotion etc. In the case of People's Union of Democratic Republic v Union of India, 1982[7], women were only paid 7 per day as opposed to 9.25 per day for male workers. After hearing both sides Justice P.N. Bhagwati held that authorities need to make sure that men and women are at par for similar nature of work.

***Maternity Benefit (Amendment) Act, 2017*:**[8] It is an act to regulate the employment of women in certain establishments for a certain period before and after childbirth and to provide for maternity benefits and certain other benefits. Every woman shall be entitled to a maternity benefit of 12 weeks which soon may be increased to 26 weeks. In case of a woman having two or more children, maternity benefits will continue to be 12 weeks from the date of the expected delivery. 12 weeks of maternity leave shall be granted to a woman who legally adopts a child below 3 months and to a commissioning mother. Work from home option shall be given to the working mother by a mutual agreement. Provision of a creche facility shall be given within a stipulated distance. A woman shall be given 6 weeks of maternity benefit in case of miscarriage or medical termination.

***Posh Act, 2013*:** This Act protects women from sexual harassment in the workplace. The POSH provisions apply to all establishments, companies, and organizations whether public or private, employing 10 or more employees whether permanent, temporary, ad-hoc, consultants, interns, or contract workers irrespective of gender. Every company having more than 10 employees shall constitute Internal Complaints Committee to receive ad address the complaints of any type of sexual harassment. POSH training shall be conducted by the organization and in case of non-compliance shall attract a fine of 50000.

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[7] *People's Union of Democratic Republic v Union of India* [1982] AIR 1473

[8] 'The Maternity Benefit Act, 1961 – Overview' (*Simpliance*, 2 March 2022) <www.simpliance.in/blog/the-maternity-benefit-act-overview/> accessed 16 October 2022

HIGHLIGHTED CASES[9]

Tehelka Case:

"Sexual Harassment complaints can be resolved at any organizational level; employer sets up the right mechanism and processes in place."

Tarun Tejpal, founder and editor-in-chief of TEHELKA, one of the renowned magazines and print houses was accused of sexually harassing an employee who was a principal correspondent of TEHELKA in 2013. At that time suitable mechanisms were required under VISHAKA GUIDELINES, thus needed to comply with sexual harassment laws to handle the reputational risks. In this case, the absence of such a mechanism and incorrect approach by management led to a reputational fiasco. Following points shall be ensured by the organization:

- Adequate legal compliance shall be ensured under POSH Act, 2013 which is forming committees, putting notices, etc.
- ICC must react positively when a sexual harassment case is filed.
- The effective functioning of the complaint committee shall be ensured by the organization.
- The organization must inform the rights and steps that can be taken by employees in case they are sexually harassed at work.

Uber Case:

Uber is a taxi booking app that makes it easy to book a cab. But we need to understand that it is not a radio taxi service like Meru. In 2014, an Uber cab service provider was accused of raping a woman in his taxi. We need to get into the fact that each owner was actually, a contractor of Uber and each driver was a staff of Uber supplied by a contractor. The car owners get paid based on the cost of the rides and shared a commission with Uber. Therefore, no verification is needed on part of Uber. The question arises is whether Uber had no responsibility. Legally Uber is clear

[9] 'Prevention of Sexual Harassment at the Workplace' (*LawSikho*) <https://lawsikho.com/course/certificate-course-in-prevention-of-sexual-harassment-at-the-workplace> accessed 16 October 2022

of any criminal and civil charges till the time Parliament makes laws regulating taxi booking or other transport booking services. It is to be noted that women are not safe even if we boycott Uber. According to the enactment of the 2013 Act and after the Nirbhaya case, ICCs are not necessary to be constituted for buses run by private sector organizations. It is a wake-up call for the government to take action and a report shall be submitted on monthly basis on the status of compliance.

ROLE OF MEN IN ANTI – SEXUAL HARASSMENT COMPLIANCE[10]:

"*Do men need to be trained like animals on how to behave with women at work?*"

"*There are more laws for women such as rape laws and marital laws and now comes another to destroy the reputation, career, and lives of men*."

"*What if the ill-willed women use the powers of this law lethally or start maliciously using the law and make the lives of men miserable*."

These are the thoughts of men concerning anti-sexual harassment laws. The reality check is that, YES, previously laws were misused but now the courts and police have become sensitive to this. Just because a complaint is filed, it does not amount that a man shall be punished. ICCs are properly required to investigate the matter and exercise decision-making skills effectively. Hostile working environments foster poor productivity and can have a damaging effect on both organizations and employees. When a sexual harassment case is filed against a person his identity shall be kept confidential, this protection shall continue even if he is found to be the culprit. This secrecy shall be maintained so that a fresh start can be made without a tainted career. A reputation is of prime importance irrespective of gender. A man's reputation shall not be tarnished just because a sexual harassment case has been filed against him. A proper internal mechanism shall be there to regulate sexual harassment so that reputational damage can be minimized which was not adhered to in the cases of TEHELKA and UBER.

[10] *Ibid*

FALSE CASES IN SEXUAL HARASSMENT CASE[11]

A complaint is filed with the knowledge and understanding that no sexual harassment occurred. There are factors that need to be taken into consideration while approaching whether a complaint is false or not:

- Whether relevant evidence are amounting to sexual harassment or not.
- Whether the complainant (aggrieved person) is an employee or not
- Whether the conduct amounts to sexual harassment or not.
- Whether harassment occurred at that workplace or not.

Just because a complaint is not proved, it does not amount to a false complaint, ONLY when the complainant knew at the time of filing that in reality no sexual harassment occurred and filed the case just to engage the respondent (against whom the case has been filed) in legal proceeding leads to the false complaint. Ways to minimize the risk of false complaints:

- The organization shall sensitize the consequences of false complaints and shall conduct programs to incorporate employee awareness.
- At the time of receiving a complaint, it is prudent to obtain a declaration that the contents are unpretentious.
- ICC shall make sure that emails or communication are not twisted by the complainant to distort the facts.
- The settlement mechanism shall not be abused by unethical complainants whereas the law mentions that monetary compensation will not be the basis of settlement.

CONCLUSION AND SUGGESTION

"Where there is Great Power, There is Great Responsibility."

- Winston Churchill

[11] *Ibid*

Females are said to be soft targets and are unsafe everywhere whether at home, at school, at the workplace, etc. Earlier the women were unaware of their rights, and the provisions provided were not at parity. Sexual harassment is such a crime that does not take into consideration the age of the female, caste, or place where she is residing, is rich or poor. A sexual harassment case can be by a complainant who is a domestic worker or by a celebrity working in Hollywood or Bollywood. The common thing between both cases is the complainant is a woman. As in the case of the #METOO movement which started in Hollywood, and then came to Bollywood, many unheard stories went around. On this e- platform, everyone started to raise their voices against the harassers. Women shall be set free instead of being tied down. But as the above quote states when women are given rights are protected by law, then this sword shall be used carefully and at the right time.