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The Silent Epidemic: Sexual Harassment in Professional Settings

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A ubiquitous problem that compromises workplace integrity and impedes gender equality is sexual harassment in professional contexts. Because of social shame, fear of reprisals, and insufficient redressal channels, harassment is still grossly underreported even in the face of progressive legal measures like India's Vishaka Guidelines¹ and the POSH Act². The historical background, contemporary issues, and governmental responses to workplace sexual harassment are all examined in this article. The study delves into the enduring power structures and cultural conventions that stifle advocates for victims and impede efficient reporting and settlement. The analysis emphasizes the main features of the POSH Act³, such as the creation of Local Complaints Committees (LCCs) and Internal Complaints Committees (ICCs), and how these laws contribute to safer workplaces. Yet it also talks about the continued difficulties in applying these policies consistently in different industries. The article discusses how creating a safe and courteous work environment requires ongoing training, employee sensitization, and organizational commitment. To provide a thorough knowledge of the problem and support more vigorous efforts to eradicate sexual harassment in professional settings, this study will explore the complexities of legal and societal impediments.

Keywords: *workplace sexual harassment, posh act, redressal mechanisms, power dynamics, legal frameworks.*

¹ *Vishaka and Ors v State of Rajasthan and Ors* (1997) 6 SCC 241

² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

³ *Ibid*

INTRODUCTION

“Sexual harassment in the workplace confuses rewards for performance with rewards for attractiveness and sexual availability.”⁴

— Warren Farrell

The number of crimes against women has dramatically increased in this era of globalization and modernization, and the way these crimes are committed has undergone a dramatic shift. In addition to more conventional crimes, new forms of harassment and criminal activity have emerged because of the advancement of information technology. Examples of these include cybercrimes crimes against women, honour killings, and sexual harassment at work. The persistence of sexual harassment in the workplace threatens the integrity of work settings and hinders the advancement of gender equality. It takes the form of unwanted approaches, hurtful comments, or sexual coercion and hinders the victims' ability to grow in their careers as well as their general well-being.

Legal advancements such as the POSH Act⁵ and Vishaka Guidelines⁶ have not stopped workplace sexual harassment; historical silence and societal stigma have made it worse. This project aims to analyse workplace harassment: its prevalence, impacts, legal protections, and barriers. Sexual harassment in professional settings persists despite current prevention efforts, which is the main research issue this study attempts to solve. This study suggests that they are insufficient because existing frameworks and rules do not address the organizational and cultural elements that support this behaviour. The theory suggests that improving the efficacy of these interventions calls for a multifaceted strategy that incorporates thorough training, strong reporting systems, and a radical change in workplace culture. Through a combination of qualitative and quantitative methods, this research will explore the efficacy of current policies and propose actionable strategies to foster a safer and more inclusive work environment.

⁴ Warren Farrell, *The Myth of Male Power* (Simon & Schuster 1993)

⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

⁶ *Vishaka and Ors v State of Rajasthan and Ors.* (1997) 6 SCC 241

SOCIETAL DYNAMICS AND THE PERSISTENCE OF SILENCE

Silent Suffering and Power Dynamics

“As women and as lawyers, we must never again shy from raising our voices against sexual harassment.”⁷

– Hillary Clinton

The above statement was made by Clinton to encourage people to report sexual harassment cases as 90 % of the cases go unreported. There are many reasons why victims of harassment frequently suffer in silence. Being afraid of reprisals is a major worry, particularly if the harasser is a powerful person. Given that 44% of workers report having experienced harassment at work, reporting harassment may result in career consequences.⁸ A major contributing factor to this silent perseverance is also the standards and expectations of society. Spoken words may be avoided by victims out of fear of ridicule or incredulity. Victims also become more silent because they run the risk of encountering negative professional outcomes, such as being called troublemakers or having their careers ruined.⁹

The fact that 75% of victims of workplace harassment saw reprisals after coming forward reflects this.¹⁰ Even while harassment is common—17.9% of working men and women worldwide report having experienced psychological abuse and harassment at some point in their careers.¹¹ Women are also afraid to go to court as they are afraid that their names could go out and they would be viewed differently in society.

⁷ ‘Hillary Clinton’s Women’s Rights Are Human Rights’ (*Academy of the Lakes*, 02 April 2016)

<<https://academyatthelakes.org/wp-content/uploads/2016/02/HillaryClintonWomensRightsareHumanRightsExcerpts.pdf>> accessed 01 June 2024

⁸ ‘The State Of Workplace Harassment 2021’ (*All Voices*, 01 September 2021)

<<https://www.allvoices.co/blog/the-state-of-workplace-harassment-2021/>> accessed 01 June 2024

⁹ ‘The impacts of workplace sexual harassment’ (*Respect@Work*)

<<https://www.respectatwork.gov.au/individual/understanding-workplace-sexual-harassment/impacts-workplace-sexual-harassment/>> accessed 01 June 2024

¹⁰ Fiza Pirani, ‘75 percent of workplace harassment victims who complain face retaliation, study finds’ (*The Atlanta Journal- Constitution*, 17 October 2017) <<https://www.ajc.com/news/national/percent-workplace-harassment-victims-who-complain-face-retaliation-study-finds/WEQy48NiTOLbsZdqlLetrN/>> accessed 01 June 2024

¹¹ *Experiences of violence and harassment at work: A global first survey* (International Labour Organization 2022)

Lack of Awareness and Stigma: The current state of societal confusion is greatly impacted by women's ignorance of their rights, especially when it comes to sexual harassment. The prevalent ignorance is not only pervasive but also deeply ingrained in societal norms and structures, reflecting a systematic issue that needs to be addressed extensively. Unfortunately, a lot of women are not completely aware of their rights or the channels through which they might seek restitution. This is demonstrated by the fact that fewer than 14% of victims of harassment ever submit a formal complaint.¹²

Furthermore, the problem is made worse by the stigma attached to sexual harassment. This worry is justified because many women report not reporting incidents of sexual harassment they have experienced at work. Financial conditions of the family often compound this issue, as women might fear losing their jobs or jeopardizing their family's financial stability if they come forward. The pressure to maintain economic security can therefore silence victims, perpetuating a cycle of harassment and underreporting.

Ineffective Redressal Mechanisms: In India before the adoption of the Vishaka Guidelines¹³, inadequate redressal mechanisms played a major role in the continuation of sexual harassment. The Indian Penal Code, 1860, sections 354¹⁴ and 509¹⁵, required victims to file a complaint before 1997 (Vishaka Guidelines). One big problem was that there were no official avenues for filing concerns or dealing with them. Victims had few options for obtaining justice because organizations hardly ever had specialized institutions to address such issues.

It can be challenging for women in today's society to come out about the violence they experience, and when they do, they often face pressure from society, internalized oppression, assault, smear campaigns, intimidation, and even other forms of harassment. Women are discouraged from reporting their abusers because they live in constant fear of being branded as misfits or disruptive. On the other hand, the victim experiences greater exhaustion than the

¹² U.S. Equal Employment Opportunity Commission, *Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace* (2016)

¹³ *Vishaka and Ors v State of Rajasthan and Ors.* (1997) 6 SCC 241

¹⁴ Indian Penal Code 1860, s 354

¹⁵ Indian Penal Code 1860, s 509

offender due to the lack of support, harassment, and the agony of having to go back to court and relive the trauma.¹⁶

In the *Bhanwari Devi v Sarpanch Mohan Ram & Ors* case¹⁷, the social dilemma of silent suffering, ignorance, and inadequate redressal channels was glaringly exposed (1995). In this case, five men viciously gang raped Bhanwari Devi, a social worker, for speaking out against child marriage that is not permitted. Victim-blaming and inadequate redressal processes were made worse when the trial court cleared the accused on the grounds of insufficient evidence. This incident made clear how urgently policies protecting women's safety and dignity at work must be made. Recognizing the severity of the situation the Bhanwari Devi case and other similar cases came to the Supreme Court, and these all culminated in the landmark case of *Vishaka v State of Rajasthan*¹⁸ which tried to solve the societal conundrum surrounding sexual harassment in the workplace by making certain guidelines which are popularly known as 'Vishaka Guidelines'.

LEGAL FRAMEWORKS AND THEIR EFFICACY

Background and Need for Legislation: Initially, the intervention to control sexual harassment in the workplace came not from the legislature but from the judiciary in the form of the Vishaka Guidelines, these guidelines came from the case of *Vishaka v State of Rajasthan*. The Supreme Court issued these guidelines to protect women from sexual harassment in the workplace. These guidelines according to the court must be observed in all workplaces whether they are private or public and would also be enforceable through law i.e. they had a binding nature.¹⁹ Supreme Court also said that these guidelines have to be followed until suitable laws are made on the same by the legislature. These guidelines defined sexual harassment and recognized sexual

¹⁶ Aashima Khanna, 'Sexual Harassment of Women at Workplace' (2018) 5(2) International Journal of Research and Analytical Reviews <http://ijrar.com/upload_issue/ijrar_issue_832.pdf> accessed 02 June 2024

¹⁷ *Bhanwari Devi v State of Rajasthan* (1997) 1 WLN 625

¹⁸ *Vishaka and Ors v State of Rajasthan and Ors.* (1997) 6 SCC 241

¹⁹ Zia Mody, *Ten Judgements That Changed India* (Penguin Books 2013)

harassment at the workplace as a violation of fundamental rights under Articles 14²⁰, 15²¹, 19²² and 21²³ of the Constitution.

Sexual harassment was described by the Vishaka Guidelines²⁴ as any physical contact or behaviour, offensive jokes or misbehaviour, the display of pornography, and requests for any form of sexual favours. To defend women's rights, they imposed strict regulations that included an internal complaints committee and outside participation. These guidelines helped to address the problem of sexual harassment in the workplace by offering a clear protocol for handling such instances.²⁵ The Supreme Court gave the following guidelines or protocols.

Employers' Duty: Employers have a duty to prevent sexual harassment and to set up procedures for complaints, prosecution, and settlement. Preventive actions should be taken by employers, such as clear bans, sanctions, and favourable working circumstances.

Procedures for Misconduct: If the violation is covered by the Indian Penal Code²⁶, the employer is required to file charges.

Sufficient Disciplinary Measures: When service regulations are broken, suitable disciplinary measures must be taken.

Redressal Process: All organizations, regardless of illegal activity, must have a redressal process. The committee, which has a female chairperson, must be composed of women.

Committee for Redress: This group shall work with non-governmental organizations, provide counselling services, and provide an annual report to the government outlining the concerns it has handled.²⁷

²⁰ Constitution of India 1949, art 14

²¹ Constitution of India 1949, art 15

²² Constitution of India 1949, art 19

²³ Constitution of India 1949, art 21

²⁴ *Vishaka and Ors v State of Rajasthan and Ors.* (1997) 6 SCC 241

²⁵ U.S. Equal Employment Opportunity Commission (n 12)

²⁶ Indian Penal Code 1860

²⁷ Mody (n 19)

These guidelines tried to curb the incidents of sexual harassment in the workplace and also tried to punish the perpetrators. However, there were certain limitations to these guidelines, they were:

Firstly, the guidelines lacked the authority of a legislative act, though, and were not exhaustive. Furthermore, the rules' breadth was constrained, and they did not address every potential harassment scenario like third-party harassment, online and virtual harassment, intersectional harassment etc.²⁸

Secondly, even with the Vishaka Guidelines²⁹ in place, the number of sexual harassment complaints reported in India was startlingly high. There was a sharp increase in recorded incidents from 2,487 in 1997 to 24,206 in 2011, according to data from the National Crime Records Bureau.³⁰ This implied that a more reliable system was required and that the current safeguards were insufficient.

Thirdly, legislative intervention was required as India signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women³¹. For its implementation a legislative act is required, simply judicial guidelines won't work.

These limitations of Vishaka guidelines³² resulted in the need for legislative intervention. The parliament came with the intervention in the form of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter POSH Act)³³. Now let's look at the key provisions of the Act and how they solved the problem of sexual harassment in the workplace.

²⁸ Malavika Rajkumar, 'The History Behind Sexual Harassment at the Workplace Law' (*Nyaaya*, 9 March 2022) <<https://nyaaya.org/guest-blog/the-history-behind-sexual-harassment-at-the-workplace-law/>> accessed 02 June 2024

²⁹ *Vishaka and Ors v State of Rajasthan and Ors.* (1997) 6 SCC 241

³⁰ 'Crime in India 2012: Compendium' (*National Crime Records Bureau*) <<https://www.latestlaws.com/wp-content/uploads/2018/07/National-Crime-Record-Bureau-Report-NCRB-2012.pdf>> accessed 02 June 2024

³¹ Convention on the Elimination of All Forms of Discrimination against Women New York 1979

³² *Vishaka and Ors v State of Rajasthan and Ors.* (1997) 6 SCC 241

³³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

Definition of Sexual Harassment: The Posh Act³⁴ defines 'sexual harassment' widely, in the definition they include both verbal as well as non-verbal acts of a sexual nature. The Act guarantees that all forms of inappropriate behaviour of a sexual character are identified and dealt with by giving sexual harassment an extensive definition. This leads to the establishment of a respectful and safe workplace.

Internal Complaints Committee (ICC): Any company or corporation that has 10 or more employees must form an Internal committee to review and resolve complaints i.e. ICC or Internal Complaints Committee. It offers victims a private, secure and safe place to report occurrences. This makes more people come out to report harassment events.

Local Complaints Committee (LCC): District officers set up LCCs for companies with less than 10 employees or in cases where the employer neglected to form an ICC. The LCC guarantees that the Act applies to small organizations as well as those that do not create an ICC. This means that every organization regardless of its size is included is covered under this.

Complaint Process: Under the Act, procedures for filing complaints, resolving conflicts, opening inquiries, and determining compensation are outlined. The thorough complaint system ensures that every complaint is thoroughly examined and that justice is served. The conciliation provision offers a way to resolve the matter without opening an official inquiry, even though the decision concerning compensation holds the harasser liable.

Employer Responsibilities: The Act entails various responsibilities of the employer to manage sexual harassment on their premises these are raising awareness, providing yearly reports etc. The Act makes specific employers accountable and forces organizations to take proactive measures to stop sexual harassment. It aids in prevention when employers raise awareness of sexual harassment and its repercussions. The yearly report submission requirement promotes accountability and openness.

Finally, the POSH Act in India, which established a legally required procedure for processing complaints, has greatly improved workplace sexual harassment. It creates a more secure work

³⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

environment for women by requiring the creation of internal and local complaints committees, defining sexual harassment more broadly, and establishing clear procedures for filing and looking into complaints.

THE RESULTANT RESURGENCE OF THE LEGISLATIVE INTERVENTION

The Act³⁵ has enabled victims to come out of silence and has been a major step in increasing awareness about sexual harassment. Through Internal Complaints Committees (ICCs) and Local Complaints Committees (LCCs), it has established official mechanisms for reporting and remedy. Organizational cultures have changed as a result, placing a higher focus on establishing safe work conditions.

Nonetheless, there exist obstacles in executing the Act consistently throughout various establishments. Some bosses are not conscious or dedicated. In some situations, the stigma around reporting endures despite the legal measures. For implementation to be successful, ongoing training and sensitization are essential. Indeed, more than 80 per cent of workers claim that their sexual harassment education improved their knowledge of how their employer addresses sexual harassment.

Ongoing efforts include regular audits by employers to ensure compliance with the Act. NGOs, government bodies, and corporations run awareness campaigns. Empowering employees to recognize and report harassment remains a priority. In 2023, 81% of women and 43% of men have faced sexual harassment in their lives.³⁶ However, between 58% and 72% of victims don't report instances of workplace sexual harassment.³⁷

While significant progress has been made in addressing sexual harassment, challenges persist. To overcome these challenges, continuous education, sensitization, and empowering employees are essential. Organizations must commit to fostering safe and respectful work environments. Although the Act provides a foundation, further efforts are needed to create harassment-free

³⁵ *Ibid*

³⁶ 'Eye-Opening Sexual Harassment Statistics for 2023' (*SC Training*)

<<https://training.safetyculture.com/statistics/sexual-harassment-statistics/>> accessed 02 June 2024

³⁷ Chris Kolmar, '17 Distressing Sexual Harassment Statistics [2023]: Sexual Harassment In The Workplace' (*Zippa*, 10 July 2023) <<https://www.zippia.com/advice/sexual-harassment-workplace-statistics/>> accessed 02 June 2024

workplaces. We must focus on developing an environment where workers feel secure reporting incidents. This involves not only implementing the Act but also challenging cultural beliefs that stigmatize reporting. Consistent application of the Act across companies, regardless of size or industry, is equally vital.

CONCLUSION

In conclusion, the journey towards eliminating sexual harassment in the workplace is a complex endeavour that requires more than just legal frameworks; it demands a profound shift in societal norms and workplace cultures. As noted by Fitzgerald, Drasgow, and Magley in their seminal research, *'The underreporting of sexual harassment is a significant barrier to legal redress and workplace improvement'*³⁸. This reflects the crucial need for organizations to foster an environment where silence is not the default response to harassment. Moreover, implementing the POSH Act³⁹ effectively hinges not only on formal mechanisms but also on the commitment to cultural change within workplaces.

'Legal remedies alone are insufficient; they must be complemented by institutional policies that endorse a zero-tolerance approach towards harassment'.⁴⁰ These insights underscore the need for ongoing training and sensitization, ensuring that every employee understands their rights and feels empowered to assert them.

Harassment incidents can be reduced through education, transparency, and accountability. Organizations must promote respect and equality, adhering to legal requirements and reevaluating workplace ethics. Integrating legal standards into daily operations will ensure worker dignity. This commitment must be pervasive and unwavering; after all, as Susan B. Anthony once proclaimed, *'Cautious, careful people, always casting about to preserve their*

³⁸ L F Fitzgerald et. al., 'Antecedents and consequences of sexual harassment in organizations: a test of an integrated model' (1997) 82(4) Journal of Applied Psychology <<https://doi.org/10.1037/0021-9010.82.4.578>> accessed 02 June 2024

³⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

⁴⁰ Graziella Pagliarulo McCarron and Aoi Yamanaka, 'The Power Of The Microphone: Podcasting as an effective instructional tool for leadership education' (2022) 21(4) Journal of Leadership Education <<http://dx.doi.org/10.12806/V21/I4/A1>> accessed 02 June 2024

reputations... can never effect a reform'.⁴¹ True change will require bold steps to ensure that the workplace is not just legally compliant but genuinely supportive and safe for all employees.

⁴¹ Susan B. Anthony, *On the Campaign for Divorce Law Reform* (1860)