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The Conundrum of Sexual Harassment at the Workplace in Reference with Vishaka v State of Rajasthan

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The day a woman can walk freely on the roads at night, that day we can say that India has achieved independence, is rightly quoted by Mahatma Gandhi. With the advent of rapid industrialisation, modernisation, economic development, liberalisation, and globalization, there has been a steady upsurge in the rate of women's employment in the formal and informal sectors in wide-ranging spheres. According to the statement issued by the Ministry of Women and Child Development, the complaints registered during the last three years are- five hundred and seventy in 2017, nine hundred sixty-five in 2018, and three hundred seventy-six in 2019.¹ The troublesome menace of sexual harassment at the workplace was never taken by any court of law before the landmark case of Vishaka and Ors, v Union of India, which is a leading case and the story of Bhanwari Devi led to a legendary movement which has drastically empowered working women in various sectors to voice-up the atrocities faced by them concerning to sexual harassment at the workplace. This creates a hostile and apprehensive working environment for women, which affects their personal growth and inhibits their ability to perform their best. Lastly, this research paper focuses on relevant laws and policies about sexual harassment in the workplace in India. It highlights the infamous Vishaka Judgment,² The background, and guidelines, and aims to critically appreciate the judgment passed by the Apex Court. Thenceforth, the main objective of the

¹ Kanishk Karan, 'Five charts show sexual harassment in workplaces is being recognised – but much more must be done' Scroll (17 October 2018) <<https://scroll.in/article/898327/five-charts-show-sexual-harassment-in-workplaces-is-being-recognised-but-much-more-must-be-done>> accessed 12 January 2025

² Vishaka v State of Rajasthan (1997) 6 SCC 241

paper is to create more effective awareness of the issues relating to the importance of a safe and dignified working environment for women.

Keywords: *rapid industrialization, modernization, economic development, sexual harassment, national commission for women.*

INTRODUCTION

The 'Right to work' encompasses not only the right to work but also includes the right to be free from sexual harassment. Sexual harassment at the workplace is a Problem faced multidimensional in all sectors of the work.

Sexual harassment at the workplace means any disagreeable sexually determined behavior that might be direct or indirect i.e. physical contact and advances, a demand or request for sexual favors, sexually cultured remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.³ This creates a hostile and apprehensive working environment for women, which affects their personal growth and inhibits their ability to perform their best. Since human rights are inclusive of women's rights, therefore, it is correct while observing the facts and circumstances of the case that sexual harassment in the workplace is a clear violation of various Fundamental rights guaranteed under the Constitution- under Article 14(2)⁴, Freedom to Practice any Profession under Article 19 (1)(g)⁵, Right to Life and Liberty under Article 21⁶ and prohibits non-discrimination on certain grounds as per Article 15⁷ Of the Constitution of India. Thus, every profession, trade, or occupation should ensure a safe working environment for their employees as it hampers the employee's right to life and the right to live a life of dignity.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, (POSH ACT)⁸ India's significant legislative step directly addresses the issue of workplace sexual

³ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 2(n)

⁴ Constitution of India 1950, art 14(2)

⁵ Constitution of India 1950, art 19(1)(g)

⁶ Constitution of India 1950, art 21

⁷ Constitution of India 1950, art 15

⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

harassment. This act was enacted by the Ministry of Women and Child Development in 2013. Moreover, in the year 2013 offences like sexual harassment, stalking, and voyeurism were criminalized under the Criminal Law Amendment Act⁹ of 2013. While the statute focuses on providing every woman with a safe, secure, and dignified working environment, free from all types of biases, the proper conduct of the statute still proves to be a challenge.

Although the law against sexual harassment was passed in 2013, there remains a lack of clarity and ambiguity on various aspects such as whether to act specifically constitutes sexual harassment, what remedies are available to the victim, and the obligation of an employer in case of harassment, safeguards available to the victims and the systematic procedure of investigation. In the informal sector, the law seems to only exist on paper for employed women. Due to the stigma attributed to sexual harassment and the fear of retribution, women still find it difficult to report cases of sexual Harassment. The awareness regarding the consequences of sexual harassment and its redressal against the same is limited, thus affecting the implementation of the act.

The Hon'ble Supreme Court of India recognized sexual harassment in the workplace in its landmark judgment of *Vishaka and Ors v State of Rajasthan and Ors*¹⁰. In the absence and delay of specific laws about sexual harassment at the workplace, the Hon'ble Supreme Court laid down certain guidelines (Vishaka Guidelines) to readdress grievances relating to the same until the POSH Act was enacted. Thus, this leading judgment enunciates the proper remedy for a woman whose rights were infringed and violate Articles 14¹¹, 15¹², 19(1)(g)¹³ and 21¹⁴ of the Indian Constitution.

FACTS OF VISHAKA V STATE OF RAJASTHAN

In 1992, Bhanwari Devi, a Dalit woman belonging to Rajasthan, worked under the Women's Development Project (WDP) which was a government initiative. She was boycotted by the

⁹ Criminal Law Amendment Act 2013

¹⁰ *Vishaka v State of Rajasthan* (1997) 6 SCC 241

¹¹ Constitution of India 1950, art 14

¹² Constitution of India 1950, art 15

¹³ Constitution of India 1950, art 19(1)(g)

¹⁴ Constitution of India 1950, art 21

village and eventually lost her job. Bhanwari Devi was brutally gang raped by five men on account of her efforts to curb the then-prevailing practice of child marriage. She was determined to get justice and managed to lodge the First Information Report. However, the medical examination was delayed by fifty-two hours. It is pertinent to mention that the examiner did not mention any commission of rape even though the rape was committed. However, the accused persons were acquitted by the learned Trial Court since there was no direct evidence and the local MLA of the district of Rajasthan supported the accused persons. In December 1993, the Rajasthan High Court judiciously observed that '*it is a case of gang-rape which was committed out of vengeance*'.¹⁵

This agitated various women activists and organizations to support Bhanwari Devi. A Public Interest Litigation (PIL) was filed by a women's rights group popularly known as the 'Vishaka Group'. A writ of mandamus was filed by the 'Vishaka Group' and various other activists and NGOs for violation of women's rights under Articles 14¹⁵, 15¹⁶, 19(1)(g)¹⁷ and 21¹⁸ of the Indian Constitution. It is important to highlight that the Hon'ble Supreme Court for the very first time acknowledged the legislative inadequacy to cover the harassment of women at her workplace and termed sexual harassment at the workplace as a violation of Basic Human rights. The court issued certain guidelines, known as Vishaka Guidelines and these guidelines were treated as law declared under Article 141 of the Indian Constitution.¹⁹

THE VISHAKA GUIDELINES

No efforts were made to enact laws related to sexual harassment at the workplace even after six years of the judgment was passed. The complaint committees were numbered and the legislature was still to be amended which led to an increase in protest and violence. Media started giving more importance to the issue of sexual harassment of women in the Workplace.

The Vishaka Guidelines lays down certain measures that an employer or persons within an

¹⁵ Constitution of India 1950, art 14

¹⁶ Constitution of India 1950, art 15

¹⁷ Constitution of India 1950, art 19(1)(g)

¹⁸ Constitution of India 1950, art 21

¹⁹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241

organization should keep in mind in order to prevent sexual harassment in the workplace.

The guidelines are as follows:

A. Express prohibition of sexual harassment as defined above at the workplace should be notified, published, and circulated in appropriate ways.

B. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

C. As regards private employers, steps should be taken to include the aforementioned prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, of 1946.

D. Appropriate work conditions should be provided in respect of work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Furthermore, an appropriate mechanism for the treatment of complaints in cases of sexual harassment in the workplace is formulated. The Complaints Committee should be headed by a woman. There is a need for third-party involvement to prevent any undue pressure from the Complaints Committee. Such a party could be an NGO or any other body that is familiar with the issue of sexual harassment.²⁰

POST-VISHAKA JUDGMENT: DEVELOPMENT IN LAW

In the year 2007, bill of draft the Protection of Women against Sexual Harassment at Workplace Bill was approved by the Union Cabinet. The bill was amended and re-introduced in the Lok Sabha in 2012. On September 03, 2012, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill was passed by the Lok Sabha, and on February 26, 2013, the bill was passed by the Rajya Sabha. The POSH Act²¹ received the then President's assent on April 23, 2013, and was published in the Gazette of India as Act No.14 of 2013. Finally,

²⁰ *Vishaka v State of Rajasthan* (1997)6 SCC 242

²¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

the Indian Ministry of Women and Child Development notified December 09, 2013, as the effective date of the POSH Act and the POSH rules.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of India (POSH Act)²² was enacted in December 2013. Vishaka Guidelines acted as a catalyst in the formation of the POSH Act²³. The POSH Act (hereinafter referred to as 'the Act') comes under the jurisdiction of the 'whole of India'.²⁴ As per the Act, an 'aggrieved woman' in relation to a workplace is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.²⁵ The Act further stipulates that a woman shall not be subjected to sexual harassment at her workplace.²⁶ Accordingly, for a woman to claim protection under the POSH Act²⁷, the incident of sexual harassment should have taken place at the 'workplace'.

This Act is not a gender-neutral legislation and protects only women. Therefore, the safeguards under the act are not applicable to males, although employers may choose to extend the protection through their policies. The Act applies to both the organized and unorganized sectors of India.²⁸ The act inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, and organizations carrying out commercial, vocational, educational, entertainment, industrial, educational institutes, sports institutions, and stadiums used for training individuals and also applies to a dwelling place or a house.

4.c. Punishment and Compensation under The POSH Act:²⁹ The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment -

²² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

²³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

²⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 1

²⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 2(a)

²⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 3

²⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

²⁸ Abhishek Bansal and Iram Naaz, 'EMERGENCE OF THE POSH ACT & ITS FEATURES VIZ-A-VIZ VISHAKA GUIDELINES' (*Acumen Juris*, 14 May 2021) <<https://www.acumenjuris.com/article-single.php?id=36#:~:text=POSH%20Law%20affects%20all%20of%20India%20and%20is,rules%20that%20prohibit%20sexual%20harassment%20of%20any%20nature.>> accessed 12 January 2025

²⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

i. Punishment prescribed under the service rules of the organization. If the organization does not have service rules, disciplinary action includes a written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, and terminating the respondent from a counseling session. Deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on-

The mental trauma and emotional distress caused to the aggrieved employee. The loss of career opportunity due to the incident of sexual harassment. Medical expenses incurred by the victim for physical/ psychiatric treatment. The income and status of the alleged perpetrator. Feasibility of such payment in a lump sum or in installments.

PROVISIONS UNDER INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 CONCERNING SEXUAL HARASSMENT

According to the statute, the standing orders should contain terms of employment including, hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays, and termination or suspension/ dismissal of employees.

A list of acts constituting 'misconduct' and specifically including sexual harassment have been described under The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (Standing Orders Rules).³⁰

PROVISIONS UNDER THE INDIAN PENAL CODE 1860 RELATING TO SEXUAL HARASSMENT

Listed below are the key offences under the IPC that could be triggered in a case of sexual harassment:

Section 345 talks about outraging the modesty of a woman i.e. assault or use of criminal force to a woman, intending to outrage or knowing it to be likely that modesty would be outraged is a cognizable

³⁰ Industrial Employment (Standing Orders) Act 1946

offense.

Section 354-D states stalking i.e. following a woman and contacting or attempting to contact such Woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitoring the use by a woman of the internet, email, or any other form of electronic communication, is a cognizable offense.

Section 509 states insulting the modesty of a woman i.e. uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman, is a cognizable offense.

In the case, **State of Himachal Pradesh v Prem Singh**³¹, the Court held that if a woman clearly refuses someone to provide any sexual advances and then she is given threats of physical violence or of demining/harming her reputation or the property, it will attract the offence under Section 503 of IPC³² leading to punishment up to two years imprisonment or fine or both. Also, if any individual morphs the pictures of a woman and shares the same with others to harass and defame her, it constitutes an offence under Section 499³³ of the Indian Penal Code with imprisonment up to two years or a fine or both.

CONCLUSION

The prime principles of equality, freedom, and personal liberty were upheld in this landmark judgment by the Hon'ble Supreme Court. It is rightly said that a Bird can't fly with one wing, similarly, it is correct to say that a society cannot fly alone without the safety and development of the women.

The **#MeToo** movement also gained popularity in the media wherein more people shared their stories relating to sexual harassment in the workplace. The Vishaka Judgment portrays a true spirit of judicial activism and shows that our supreme authority was successful in providing

³¹ *State of Himachal Pradesh v Prem Singh* AIR (2009) SC 1010

³² Indian Penal Code, 1860, s 503

³³ Indian Penal Code, 1860, s 499

justice to the victim by laying down the guidelines supporting women. But in reality, in India, sexual harassment is still prevalent in the workplace despite the attempts made to eradicate it. The case of Bhanwari Devi sparked a need for proper legislative measures for employed women to remain free from this inequality that pertains to the workplace. Such hindrances can only be solved with widespread awareness among the people, and incorporating such manners since childhood. One of the significant steps can be to incorporate such things in the Indian educational system, to help inculcate such manners as part of their culture and duty towards the society. Thus, it is the need of the hour to take a close look at the matter and thus, provide alternative provisions that could better improve the situation.

The other need of the hour is development of a holistic approach and social moment among the people. The change can be adopted only when society changes its attitude so that the women can also move freely and participate in the affairs of the life like the males. Thus, a sense of mutual respect and dignity needs to be developed.

Such success cannot be achieved with the help of a single law or citizen but needs the support of the whole of the society, legislature, judiciary, executive, lawyers, NGO, Organisations, media, police, and others.