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Sexual Harassment **& the CJI;**

In Re: Matter of Great Public
Importance touching upon the
Independence of the Judiciary:
[Suo Motu Writ Petition (C) 1/2019]

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Sexual Harassment & the CJI;
In Re: Matter of Great Public Importance touching upon the
Independence of the Judiciary: Suo Motu Writ Petition (C)
No.: 1/2019

By: Aayushi Gupta

ABSTRACT

As there is improvement in the education system and employment opportunities, lots of women are entering the commercial world to contribute to the country's economy. This step of women is not at all appreciated by every man and therefore they try to defame them or have wrong intentions towards them which would lead to sexual exploitation. According to Maneka Gandhi, it is the duty of the country to take all the necessary steps to eliminate this evil act from society as women have a right to work in a safe environment.

Sexual harassment is a wider aspect of the violation against women which is faced by her in day to day life. Sexual harassment are the evil actions that can be taken in many forms such as molestation, stalking, rape etc. It is the violation of fundamental rights of the women which is guaranteed under part III of the constitution under Article 14, 21 & 19 (1) (g).

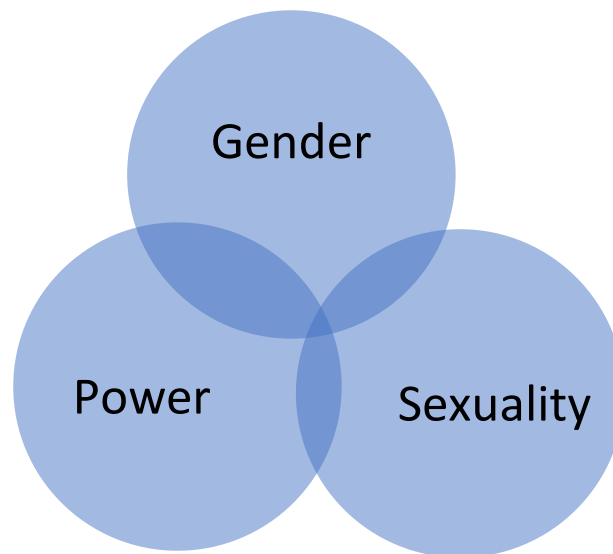
The first case reported against sexual harassment at workplace was in a case of Vishaka in which the apex court provide the guidelines to prevent the sexual harassment. Beside this there are various international regimes which are discussed in the paper which ensure the safety of women at workplace. Despite this, parliament also enact a legislation the POSH Act for the prevention of the same.

Key words: Sexual Harassment; POSH Act; Vishaka Guidelines; International Regime

CHAPTER 1. INTRODUCTION

In today's scenario a global phenomenon that is prevailing throughout the world no matter whether it is a developing country or a developed country is Sexual harassment with women. In the case of sexual harassment, the factors like culture, class, race, color, religion, status, geographical boundaries, etc. doesn't matter. It spreads like a virus across the globe. Therefore, this can be said that sexual harassment basically is a calling of an unwanted relationship. This offence is a violation of one's dignity, human rights and most importantly gender equality, has emerged as a fundamental crisis all over the world. This kind of offence is a contemporary and complex issue which involves not only women, but also their perceptions and behaviour, and also includes the social norms prevailing in the society which emerges from gender discriminatory attitudes and becomes a complex interplay of gender, power and sexuality.

Figure 1



If we take Indian scenario, a survey reports that in every 12 minutes a woman is sexually harassed. In India, after the introduction of New Economic Policy in 1991, as globalization

with industrialization came into picture, development in various fields changed the role of women in the society rapidly. Nowadays we can see that in India women are there in every field whether it's about providing education, as economists, politicians, in media, arts, space, science and technology or any profession such as lawyer, doctor, etc.

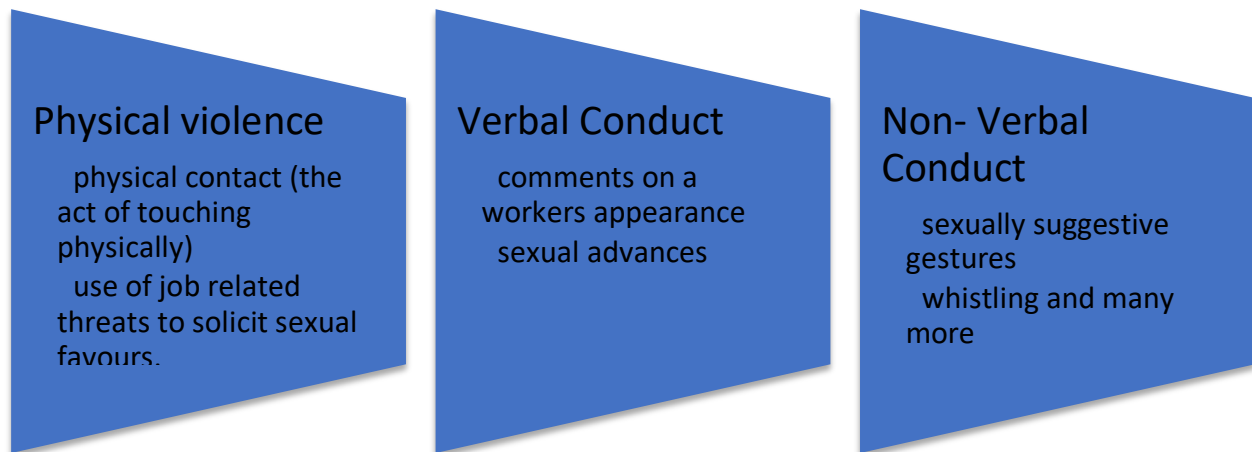
As women are shifting from household work to the commercial world, we see the reports and the surveys provided by the police and the government. We can get to know that these kind of cases usually happen at the workplace. The rate of these offences is rapidly increasing in the country. Though there is continuous increase in the cases of sexual harassment, but these crime are mostly not reported by women as they have a fear to lose their job and also their personal and professional reputation and its being miserable to live in the society.

From Vedic period till now, women have faced various challenges related to their glory and respect but this struggle for equality, recognition and survival is still going on. Women are always suppressed and dominated in this male dominant world but now the scenario has changed as the women are shifting from households to the commercial world but the condition of women is still miserable. We can trace the common element in all these eras under the privileged status of women. It has become the trend that women are liable to suffer all kinds of violence and abuses and they are also deprived from all the rights provided to them by the constitution under part III to live with dignity. And it is noticed that the act of harassing and abusing women is the most heinous and shameful crime because women are considered as a goddess and it is also stated in our puranas.

MEANING AND DEFINITION

What constitutes Sexual Harassment?

Sexual harassment means and includes harassment in a workplace or any professional or social situation which usually involves the unwanted sexual advances, favours or any kind of obscene remarks. The hon'ble Supreme Court in Vishaka's case guidelines laid down that any unwanted sexual behaviour amounts to be sexual harassment irrespective of the fact that whether it is direct or implied.



Definition of the term:-

1) Harassment:-

“A behaviour that annoys or upsets someone”

- Cambridge International. Dictionary of English”¹

2) Sexual:-

According to the Compact Oxford English Dictionary² defines:-

☐ “Relating to the instincts and activities connected with physical attraction or intimate physical contact between individuals.

☐ Relating to the sexes or to gender

3) Sexual Harassment:-

“An act which involves persistent and unwanted sexual advances, typically in a workplace or other setting where the consequences of refusing are potentially very disadvantaging to the victim”

- Wikipedia The free Encyclopaedia

4) Victim:-

“Someone or something, which has been hurt, damaged or killed or has suffered, either because of the actions of someone or something else or because of illness or chance.”

- Cambridge International. Dictionary of English (2004)

5) Harasser:-

“The one who harasses”

- Online Plain Text English Dictionary (2004)

¹ ***Cambridge Advanced Learner's Dictionary & Thesaurus*** © Cambridge University Press

² <https://dictionary.cambridge.org>.

INCARNATION OF SEXUAL HARASSMENT

“An unwelcome sexual gestures or behaviour whether directly or indirectly, sexually coloured remarks, physical contact and advances, showing pornography, a demand or request for sexual favours, any other physical verbal/non-verbal conduct being sexual in nature and passing offensive and unacceptable remarks.”

-Sexual Harassment of women at workplace act, 2013

As the guidelines provided by court in Vishaka's case that is the employer's duty to ensure that at the place of employment and in the due course of employment every woman working with them must not face sexual harassment and also provides mechanism to resolve these issues. It is categorized into two heads:

- a) Quid pro quo sexual harassment: it occurs when advances which involve bribery, threats or any other condition of employment

Hostile environment sexual harassment: it generally occurs when there is a possibility that harassment can affect one's ability to perform the job and sometimes it also creates an inimical, intimidating or offensive working environment.³

FORMS AND FACES OF SEXUAL HARASSMENT

Eve –Teasing:-

This is the most common form of sexual harassment in India. Eve teasing means sexually harassing a woman in public. The act of eve teasing can be done either individually or in a gang or a group and can harass a single woman or more. It constitutes or includes a verbal comment which is socially disapproved of or any kind of sexually explicit statements. It also includes inappropriately touching or brushing against a woman or stalking them or passing of undesirable comments.

³ Guide on Prevention of Sexual Harassment in the Workplace, Beijing Zhongze Women's Legal Consultation and Service Center(2010)

In the 1960s it can be traced to the increase in the crime of eve teasing through the nation. Today we can see that in India large numbers of women have faced or are facing this eve teasing almost everywhere either it is a public transport or a shopping complex or a public place, etc. It becomes an evil factor and has to be eradicated as soon as possible. But it is disheartening to know that there is no such legal provision made to stop eve teasing except in the state of Tamil Nadu.

This kind of offence affects a woman emotionally and psychologically. It cannot be forgotten so easily. This is a serious offence which harms or affects the women's dignity, honor, and self-respect.

The hon'ble Supreme Court on 30.11.2012 in the case Deputy Inspector General (DIG) of police & Anr v S. Samuthiram⁴ directs the central Government to make effective laws to prevent eve-teasing and also holds that with the changing time it is extremely important to protect the dignity of a woman as more and more girls are engaged in educational institutes, or professional fields.

Molestation:-

Molestation can be best explained as a 'sexual abuse' or 'sexual assault'. Basically it is defined as forcefully imposing sexual behaviour on a woman by a man.-It can be categorized as fondling, sodomy, child pornography, mutual masturbation, etc. In most of the cases the harasser is a family member or a close friend so eventually it becomes difficult to report this kind of case which leads to an increase in the number of cases day by day. Another reason for the increase in molestation cases is societal pressure as in society they always blame women for this. They are treated as a disgrace to the family and in the eyes of the society and sometimes the harasser threatened the victim not to disclose this in front of anyone. This kind of case even happens in case of marriages where the husbands sexually abuse their wives and it is termed as 'spouse sexual abuse'. The recent example of molestation is the Gargi college case in which some boys molest a girl of Gargi college of Delhi University South Campus.

⁴ SLP(C) No.31592 of 2008

Therefore, we can say that it is an act of unwanted sexual advances or activity. In India there are no specific provisions related to molestation explicitly. However, the harasser can be punished under Indian Penal Code, 1860 section 354⁵ which states that:

“Assault or criminal force to woman with intent to outrage her modesty”

Under this section the offender is punished with the imprisonment which can be extended up to 2 years or with fine or with both. But after the criminal law (amendment) act, 2013 the term of imprisonment is changed and it becomes imprisonment for one year which shall be extended up to 5 years.

❏ **Rape:-**

This is the heinous among all the forms of the victim. A rape is defines as an act of assault and physical violence which is expressed through a sexual means.⁶ This kind of crime not only harms the woman's modesty but also destroys one's soul. In most of the cases rape is done jointly with murder. Rape is criminalizing under the Indian Penal Code, 1860 under section 375.⁷ The most horrible cased of rape throughout the world is of Junko Furuta⁸ in a 1988 case in which she was brutally raped over 400 times by more than 100 people along with this she suffered from physical violence and mental trauma for around 43 days and on 4th January 1989 she died because of immense pain. But nevertheless rape cases are continuously increasing day by day all over the world.

BASIC CAUSES

It is very difficult to find out specific causes for this as it cannot said which area or field are generally affected from this but according to an analytical report the prominent causes for sexual harassment are:-

⁵ <https://devgan.in/ipc/section/354/>

⁶ Mukesh & Anr v/s state for NCT of Delhi & ors

⁷ <https://indiankanoon.org/doc/875650/>

⁸ <https://thetecheducation.com/junko-furuta-a-mind-staggering-rape-case-that-shocked-the-whole-world/>

- **Male Domination**

The male domination has been prevailing in this world since ancient times. The sick mentality of males that they can overpower the women is the main cause of violence against women such as domestic violence, sexual abuse, etc. Men misunderstand that they have the right or authority over women. The popular perception is that the men who are in power try to make sexual favors toward female subordinates. Most of the sexual harassment cases are seen in the professional fields at workplace. This kind of harassment that women have to face at workplace is not about having sex but it is about to show male domination on women. And this kind of attitude is the reason for widening gender inequality.

- **Inferior Job Position**

The women who are in lower or subordinate positions generally fall into this trap. The man who is in a superior position asked for sexual favors for promotions. Except this, men who are in superior positions also threaten the women employees of subordinate positions, that is they won't do what he says then she might lose her job. This is one of prominent reason of the sexual harassment at workplace.

- **Aggressive Masculine Trait of Male Gender**

It is reported by the various researchers that cases related to sexual harassment can be found in mostly everywhere either within the organization or at home or at educational institutes, etc. The constant fear of losing position or power has a great impact on male ego as a result of which sexual harassment cases is on rise. Despite this, one man also wants to show their male dominance in front of their friends and colleagues is also a biggest factor or a cause of sexual harassment.

- **Misperception about the Friendly Nature of Women**

Sometimes a friendly behaviour of a woman towards a man also becomes the reason for harassing her. It is very well noticed that sometimes a man misunderstood a woman's friendly behaviour, that she is interested in him and considered that he has all the rights to do anything with her. And sometimes if a woman denies their proposal they often take this on their ego

and for seeking revenge they try to harass them by forcing himself on her or by lowering her image in front of others.

- **Higher Academic Profile and Lesser Job Opportunity**

In today's world women are progressing in every field. They are intelligent and very good performers in academics also. It can be seen that they are highly qualified and still didn't get that much opportunity because of gender inequality. And sometimes they are also asked for sexual advances to get a job. Sometimes, those women who are financially weak, or in need of a job often fall in this trap. Despite this the man who is in a superior position also asked for sexual offers for promotions. Salary raise or any other kinds of advances. This is one of the biggest cause due to which there is a rise in the cases of sexual harassment.

CHAPTER 2. SEXUAL HARASSMENT LAWS IN INDIA

CONSTITUTIONAL PROVISION

The preamble⁹ The constitution provides equal status and opportunity. But the sexual harassment cases violates the preamble as woman used to find it very difficult to get equal status and opportunity as they have to face various challenges sometimes even the recruiter or interviewer or employer gave them sexual offers for getting the job.

The Indian constitution under part III provides fundamental rights which are enjoyed by every citizen of India. In part III it is enshrined under Article 19 (1) (g)¹⁰ that every citizen of India is free to practice any profession or carry any occupation which is not forbidden by law. According to this article even every woman have a right to work either carry any occupation or as a professionalist or can be work as an employee according to her qualification in any office either private or public but this right is infringed in case of sexual harassment. There are numerous cases related to sexual harassment at workplace which adversely affect not only the physical capabilities of her to work but also affect her mentally and the consequences of this are more than worst.

Despite this part III of the constitution also provides right to life and liberty¹¹ according to which every citizen of India not only have a right to live but we have a right to live with dignity¹². The act of sexual harassment includes eve teasing, inappropriately touching, rape, etc. which affects a woman's modesty and dignity. These kinds of acts infringe the fundamental right of women to live with dignity. Therefore, this act is punishable under

⁹ <https://secure.mygov.in/read-the-preamble-india/>

¹⁰ Article 19(1) (g) all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.

¹¹ Article 21 constitution of India

¹² Narendar Kumar v. State of Haryana

various statutes but the implementations of these laws are very poor as a result of which the number of cases is increasing day by day.

Article 21 with reference to Article 14 states that though our constitution provides fundamental right of right to equality as every citizen of India is equal in the eyes of law and each and every citizen get equal protection of law but still men consider women incapable of doing a job. And even also if a woman is more capable from a man then it will be seen that he takes that on his male ego that is basic cause of sexual harassment as we studied in the earlier chapter and these sexual harassment cases will automatically infringe the right guaranteed under Article 21.¹³

SEXUAL HARASSMENT OF WOMEN WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013

According to the Sexual Harassment Of Women Workplace Act, 2013 defines it is as an act which is unwelcomed or a behaviour which is either directly or impliedly say physical contact, a request for sexual favours, making undesirable sexual comments, or showing pornography, etc.¹⁴. In other words, we can say that, any unwelcome act which is sexual in nature is defined as sexual harassment. In *Shanta Kumar v. CSIR*¹⁵ the Delhi High Court stated that “undoubtedly, physical contact or advances would constitute sexual harassment provided such physical contact is a part of sexually determined behaviour”.¹⁶

Following are the circumstances or situations which amount to the act of sexual harassment as provided by the Act:-

1. If there is an implied or explicit promises for the preferential treatment in her employment;
2. If there is implied or explicit threat of deleterious treatment in her employment;
3. If there is implied or explicit threat about her position or status of employment;

¹³Mohini Jain v State Of Karnataka [AIR 1992 SC 1858]

¹⁴ Section 2(n) of the sexual harassment Act, 2013

¹⁵ *Shanta Kumar v. Council of Scientific & Industrial Research & Ors* W.P(C) 8149/2010

¹⁶ SCC 2017 Online Del 11327

4. If there is an interference with her work or eventually creating an intimidating or offensive or a hostile working environment;
5. Or giving her humiliation which results into deteriorating her health and safety¹⁷

One of the most important features provided under this Act is that in every office of organization or a company or an institution where there are more than 10 employees, there must be the setting up of an internal complaints committee. This committee is set up to hear or redress complaints or grievances relating to sexual harassment.¹⁸ In the case where there are less than 10 employees, a local committee is set up in every district headed by the district officer.¹⁹ This committee at the time of inquiry into a complaint shall exercise the powers same as the civil court. In *Ruchika Singh Chhabra v. M/S Air France India & Anr.*²⁰ “Directed that the ICC should be constituted in strict compliance with the requirement under law”

Powers of Internal Complaint Committee:-

An internal complaint committee under this act has vested with the same powers as that of Civil Court as mentioned in the code of civil procedure, 1908:-

- ❖ The committee can issue summons and enforce the attendance of any person and examine every person related to the enquiry on the oath.
- ❖ Issue the summons for discovery and production of the documents.
- ❖ And all the other matters as may be prescribed.

Despite this, the committee also has a power to give suggestions to the employers to make certain changes as per the requirement:-

- ✓ Provide relief for aggrieved women.
- ✓ Granting leave to the victim.
- ✓ If possible, transfer the aggrieved woman to the other branch

¹⁷ Section 3(2) of Sexual Harassment Act

¹⁸ Section 4, id.

¹⁹ Section 5; 6 & 7

²⁰ *Ruchika Singh Chhabra v. M/S Air France India & Anr.* LPA. No. 237 of 2018, C.M. Appl. Nos. 16802-03 of 2018

PROVISIONS UNDER IPC & CRIMINAL LAW AMENDMENT ACT, 2013

CRIMINAL LAW AMENDMENT ACT, 2013

This act is also known as Nirbhaya Act. It is an Indian legislation which is passed by:-

- By Lok Sabha on 19th March, 2013
- By Rajya Sabha on 21st march, 2013

This legislation is an amendment of criminal law, i.e., Indian Penal Code; Indian Evidence Act; and Code of criminal procedure, 1973 on the laws related to sexual offences. Originally, this legislation was an ordinance which in the light of Delhi Gang Rape Case of 2012 was propagated by our former president Late Mr. Pranab Mukherjee, on 3rd April 2013. This Act acknowledges some acts as offences in an expressed way. These offences are related to or dealt with Indian penal code such as sexual harassment; acid attacks; stalking; etc.

INDIAN PENAL CODE (IPC)

Under IPC various provisions and sections deal with crimes related to women. These are:-

a) **Section 294:- Obscene Acts and song**

This section involves every obscene act in any public place or singing or reciting of any kind of obscene songs or words to annoy other people is punishable with either imprisonment which may extend up to 3 months or fine or both.

b) **Section 354 (A):- Sexual Harassment and Punishment**

This section states that if a man demands sexual favours, showing pornography, trying to make any physical contact despite of woman showing disinterest is concluded to be a crime and is punishable either with imprisonment of 1 year which may extend up to 3 years or fine or both.

c) **Section 354 (B):- Assault or use of criminal force to woman with intent to disrobe**

This section states that if a man assaults or criminally forces or abet her to be naked that he is liable for the punishment for imprisonment from 3 years to 7 years of jail and fine.

d) Section 354 (C):- Voyeurism

It state that voyeurism means an act in which a man used to watch or capture or sharing any image in which a woman is doing or engages in a private act²¹ without her consent. In these kinds of activities if a man is convicted for the first time he shall be liable for imprisonment between 1 to 3 years and shall also be liable for fine but if he is convicted for the second time then the term of imprisonment is increased to 3 to 7 years.

e) Section 354(D):- Stalking

According to this section if a man follows and tries to make a physical close contact with a woman, while a woman not interested in him or monitoring her through internet or email or any electronic communication amounts to an act of stalking.²² This act is punishable with imprisonment for the term of 3-5 years and shall also be liable to pay fine.

f) Section 375:- Rape

An act of penetration of penis in to woman's vagina, urethra, anus or mouth²³, or inserting of any object into anybody part of the woman amount to be an act of Rape which punishable with the imprisonment for the life time or the term of imprisonment for 7 – 10 years and shall also be liable for fine.

g) Section 376 A:- Punishment for causing death or resulting in persistent vegetative state of victim

If a woman is raped which amounts to her death or leaves her in a persistent vegetative state then the person is liable for the imprisonment up to 20 years which shall be extended to life time imprisonment and with fine.

²¹ An act of watching carried out in place, in circumstance in which victim is undressed or engaged in some sexual acts.

²² Santosh kumar Singh v. state

²³ The extent of penetration is not required a mere insertion is enough to prove it as a rape.

h) Section 499:- Defamation

If a man is trying to defame a woman by morphing her pictures and sharing it to harass her is punishable with imprisonment up to 2 years or fine or both.

i) Section 503:- Criminal Intimidation

If a man treats a woman for detrimental harm (physical or reputational harm) , the refusal of a woman for sexual favours is punishable by 2 years of jail or fine or both.

j) Section 509:- word, gesture or an act intended to insult the modesty of woman

If a man utters or makes any word, sound or gesture or showing any object which interludes a woman's privacy is punishable for 3 years of jail with fine.

INTERNATIONAL LAWS AND POLICIES FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE

✓ **UN General Assembly Resolution on the declaration on the elimination of violence against women**²⁴: -

According to Art. 2(b) sexual harassment is also includes in violence against women. The Art says that sexual harassment is prohibited at workplace, educational institute or any other place. This resolution also encourages and promotes that the member nation must make penal sanction, civil and administrative sanction as well as according to Article 4(d-f) preventive approaches to reduce and eliminate these crimes.

✓ **Convention on the elimination of all forms of Discrimination against women**²⁵

(CEDAW):- According to Article 7- Article 16 all the member nations must take appropriate actions or steps to reduce and eliminate the discrimination going on with women in every field.

²⁴<https://www.un.org/documents/ga/res/48/a48r104.htm>ILO

²⁵ <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

- ✓ **Beijing Platform for Action**²⁶: - this treaty includes both the element as it states that sexual harassment is form of violence against women as well as form of discrimination too. It directs all the actors including government, employers etc. to enact and enforce law on sexual harassment and also directs that the employers must develop policies related to anti-harassment and also implement prevention strategies in the organization.

- ✓ **ILO Committee of Experts on the Application of Conventions and Recommendations**: - this convention claimed that sexual harassment is a kind of sex discrimination which is explained under Discrimination (Employment and Occupation) Convention (No. 111) 1958. Sexual harassment is also prohibited under ILO's indigenous and tribal people's convention (No. 169).

- ✓ **International Covenant on Economic, Social and Cultural Rights**: - in this covenant there are various provisions that deal with women. Art 7 states that women have a right to fair conditions of work and it also prohibits sexual harassment at workplace.

²⁶ <https://www.un.org/womenwatch/daw/beijing/platform/>

CHAPTER 3. DEVELOPMENT OF LAW ON SEXUAL HARASSMENT IN

INDIA

VISHAKA JUDGMENT

In the landmark judgment of Vishaka & Ors V. State of Rajasthan & Ors²⁷ the hon'ble Supreme Court of India provides the guidelines for the sexual harassment at workplace for the very first time. In this case, Bhanwari Devi was a social activist in a village of Rajasthan. A social Development project which was initiated by the state government to stop child marriage Bhanwari Devi was an active socialist in that. She initiated to stop an infant marriage and as a consequence of this the boy who was going to marry that infant gang raped Bhanwari Devi with his friends in front of her husband.

After this, Vishaka and other women of that village filed a PIL in the Supreme Court that this is the violation of her fundamental rights provided under Article 14, 19 & 21. They claimed under this petition Bhanwari Devi was gang rape when she worked as a socialist and doing a job which was initiated by the state government. Therefore, first time in India the guidelines were passed for the sexual harassment at workplace with reference to the provisions of UN convention on the CEDAW.

Following are the guidelines provided by the supreme court in simple words:-

- 1) In every organization the employer or his authorized person is bound to determine and prevent the sexual harassment acts and also responsible to provide proper procedures for settlement and resolution by taking all necessary steps into consideration.
- 2) Any physical contact, any kind of demand or request for sexual favors, by passing any sexually colored remarks, showing pornography, or any other kind of verbal or non-verbal conduct of sexual nature. Are determined as unusual sexual behaviour.

²⁷ Vishaka & ors V. State of Rajasthan [AIR 1997 SC 3011]

- 3) The employers can take following steps to prevent these kinds of act :-
 - a) Sexual harassment is prohibited is expressly circulated in appropriate way throughout the organization.
 - b) In government or public sector undertakings with the circulation of rules and regulations prohibiting the sexual harassment act also provides the penalties for the offenders.
 - c) According to the Industrial Employment (standing orders) Act, 1946 it is mandatory for all the private undertakings employers to include the rules and regulations relating to sexual harassment in the company's bye laws or standing order.
 - d) It is necessary to provide appropriate working conditions in respect of work, health, hygiene etc. to ensure that no women employee will suffer a hostile working environment.
- 4) If the offence committed or act done is punishable under IPC or any other law, it is the duty of the employer to take appropriate action against it by filing a complaint under appropriate authority. Despite this, employers also ensure that the aggrieved party and all the witnesses should not be discriminated against and if they want they can be free to seek transfer.
- 5) The employer must take action according to the prescribed rules if the act done amounts to misconduct of employment services.
- 6) In every organization an appropriate complaint redressal committee must be set up and it is the duty of the committee to ensure time bound treatment of complaints filed by the victim.
- 7) Complaint committee provides a counsellor or other support services, which include maintaining secrecy. The committee must be headed by a woman and not only this but also half of the committee members are women.

Despite this to avoid undue influence or any kind of pressure from seniors the committee involves a third party. The third party can be a NGO or any other body which deals with the issue of sexual harassment.

The committee is bound to make an annual report which will be forwarded to the concerned government department.
- 8) The issues of sexual harassment in due course of employment can be referred at or discussed in employer employee meetings.
- 9) Proper awareness must be spread throughout the organization to educate the female employees about their rights via notifying guidelines and also provide the knowledge of available law dealing with that in a suitable manner.

- 10) If an act of sexual harassment is done as an act or omission by an outsider, then it is the duty of the employer to take all necessary action in support of the victim.
- 11) It is the duty of both state and central government to make proper supervision of the employers whether they implement these guidelines in their organization or not, including private sector employers.

POST VISHAKA DEVELOPMENTS

Central civil service (conduct) rules 1964²⁸, were also amended in 1998 in pursuance of Vishaka judgment by incorporating R. 3C according to which sexual harassment with working women is prohibited.

After Vishaka judgment another case was filed in respect of sexual harassment was Apparel Export Promotion Council V. A.K. Chopra,²⁹ the Supreme Court by referring the guidelines provided under Vishaka judgment dismiss the superior officer of apparel export promotion by held him guilty of sexual harassment. SC also enlarge the definition of sexual harassment by stating that physical contact is not necessary to conclude a crime as a sexual harassment.

Further in the judgment of the case Medha Kotwal Lele & Ors V. Union of India & Ors³⁰ directs the state government to file an affidavit to emphasize the steps or actions taken by them to implement the Vishaka guidelines in their state. Due to the non-satisfactory performance of the state the court further directed that the state set up sufficient mechanisms to ensure proper implementation of Vishaka guidelines.

²⁸ https://www.iitk.ac.in/wc/data/CCS_CONDUCT_RULES.pdf

²⁹ Apparel Export Promotion Council V. A.K. Chopra [AIR 1999 SC 625]

³⁰ (2013) 1 SCC 297

CHAPTER 4. RECENT TREND IN SEXUAL HARASSMENT

(CASE LAWS) RE: MATTER OF GREAT PUBLIC IMPORTANCE TOUCHING UPON THE INDEPENDENCE OF THE JUDICIARY

[SUO MOTU WRIT PETITION (C): 01/2019]

BACKGROUND OF THE CASE

On Friday, 19th April a junior court assistant at Supreme Court who was around 35 years old wrote to 22 judges of Supreme Court regarding the sexual harassment act done with her by none other than CJI Ranjan Gogoi. She alleged that CJI Gogoi in 2018, on 10th & 11th October had made sexual advances on her at his residence.

She said in her affidavit that “He hugged me around my waist, & touched me all over my body with his arms and by pressing his body against mine, and did not let go. He told me ‘hold me’, he did not let go of me despite the fact that I froze and tried to get out of his embrace by stiffening and moving my body away.”

She said after refusing him she walked out of his residence. After two month of the incident by mentioning three grounds which were also mentioned in the inquiry report she was dismissed from her post. The main reason was mentioned in the report was that she had taken a casual leave without taking a permission. Despite this on 28 December, 2018 her husband and brother in law who were constables in the police force were also suspended on the ground that they were indulge in a criminal act though that was a local fight which was resolved in 2012 mutually.

She said that on 11th January CJI’s wife called her at her place and asked her to apologize by rubbing her nose on the ground in front of her and she did it. Despite asking for the apology,

her physically disabled brother-in-law who was working as a temporary junior court attendant under the discretionary quota of CJI was also dismissed from his post.

On 9th march when she was residing in her ancestral village at Rajasthan with her husband, the Delhi police came there and took them into custody for questioning him in the cheating case filed against her. According to the reports she was alleged for the cheating stating that she had taken Rs 50,000 by giving a promise that she will secure him a job at Supreme Court, but didn't complete her commitment.

At Tilak Marg police station the SHO asked what actually happened then her husband narrate the whole story of the sexual harassment.

On 20th April, CJI conducted a special hearing which was followed by Justice Arun Mishra & Justice Sanjiv Khanna. In that hearing no judicial order was passed and the CJI stepped aside. When the reports were published in the media, Ranjan Gogoi convened an urgent hearing at apex court, i.e., Supreme Court. According to the reports the matter was dealing with "great public importance touching upon the independence of judiciary."

On 23rd April, the hearing was begun by the 3 judge Bench composed of Justice Arun Mishra, Rohinton Nariman and Deepak Gupta. A notice was issued to call the lawyer Mr. Bains to present in the court in- person.

On 25th April, the 3 judge bench directed the retired justice A.K. Patnaik who was assisted by the 3 members comprises the CBI director, the IB and the Delhi Police commissioner to conduct an enquiry and submit a report with the documents attached to the Bench.

Despite this, simultaneously an in house enquiry was also held which was directed by the Justice SA Bobde, Justice NV Ramana and Justice Indira Banerjee to look into the matter of sexual harassment allegation.

The enquiry done by the justice AK Patnaik and team was focusing on the conspiracy allegations while the in house panel focusing on sexual harassment allegations.

On 30th April the petitioner/ complainant withdrew from the in house enquiry by stating that neither she allowed to present her lawyer during proceedings nor she was informed about the committee's procedure and she isn't even allowed to present any kind of audio or video recordings.

WHAT IS THE PROCEDURE FOR ENQUIRY AGAINST SC JUDGES?

Now any proceeding against any Supreme Court or high courts serving judges is dealt via in house procedure.

- Procedure when charges are against a High court judge: - if any allegation is made against any high court judge then in that case the chief justice of that high court will examine the matter. If in a case the allegations made are frivolous then the chief justice of high court will file a complaint and also inform CJI regarding the same.

If in the opinion of CJ the complaint is of serious nature, then he shall examine the matter and if he thinks fit he can forward the complaint to CJI. Then the CJI will examine the whole matter and also refer to the CJ of high court and the concerned party and if necessary set up a three member committee which includes 2 CJ of different high courts and 1 high court judge.

- Procedure when charges are against Chief Justice of High court: - the same procedure will follow as followed in the case of A High Court Judge but in this case the matter will directly go to CJI and if CJI thinks fit, a committee of 3 members will be formed.
- Procedure when Charges are against the judge of the Supreme Court: - the matter will go to CJI and if he feels necessary he formed a committee of 3 judges of the Supreme Court.
- Procedure when the charges are against the Chief Justice of India: - in this case a committee must be formed comprising another 3 judges of the Supreme Court.

However, there is no specific provision mentioned in the in-house proceeding to deal with the charges against the Chief Justice of India.

PURPOSE OF AN IN HOUSE PROCEDURE

Its main purpose is to maintain the independence of Judiciary by keeping all the other agencies outside the proceedings. The objective of this is to maintain the public trust in the judicial processes. The mechanism of in- house proceeding also ensures that the any kind of false allegations or fake complaints will be rejected at early stage.

ISSUE RAISED

- a) Whether the allegations of sexual harassment is concluded to be an infringement upon the independence of judiciary?
- b) The most important question arises here: did the hearing prejudice the in-house panel?

DECISION OF IN HOUSE PANEL

According to the In House committee report there was no substance of sexual harassment as alleged was found. The in house panel on 5th may, 2019 submitted the report by following the in house procedure, to the next senior judge who is competent to deal with the case and a copy of the report was also sent to the CJI Ranjan Gogoi. The report wasn't made to the public as it was not meant to be made public as stated in the case of Indira Jaising v. Supreme Court of India & Anr.³¹

The public strongly criticized the way of investigation and the decision framed. This decision put the question on the credibility of the judicial system. It seems like the in-house committee is biased as they didn't follow proper procedure and also didn't include any NGO or any third party in drafting the decision.

³¹ (2003) 5 SCC 494

ANALYSE THE PANEL'S DECISION

It was believed that if the court doesn't follow the law & procedure they made then why should the public follow the law. The main objective of the judicial system is to provide a fair and reasonable justice by following the principle of natural justice but this case proves that if the law breakers are the law protectors themselves then no law and order will follow.

The Supreme Court judge DY Chandrachud also requested the panel for the full court sitting and also suggested including external members in the committee. He suggested this so that all the doubts related to biasness and transparency of decision and the absence of the external member will be clear in the mind of public so that the faith of the public in the existing judicial system will not lose. Advocate Mehak Kalra also said that the decision of the panel is in non-compliance with the provision of the POSH Act.

VISHAKA & ORS. VS STATE OF RAJASTHAN [AIR 1997 SC (3011)]

BACKGROUND OF THE CASE

In this case Bhanwari Devi (plaintiff) was a social activist in a village of Rajasthan. She worked for the social development programs which was initiated by the state government which include a program for stopping the child marriage in the state. By following this, Bhanwari Devi try to stop the marriage of Ramkaran Thakur (Gujjar) infant daughter. But she failed to do so but she was not at all pardoned for her acts. Later on, in September 1992, Ramkaran Thakur and his 5 friends to seek revenge gang raped Bhanwari Devi in front of her husband. When Bhanwari Devi went for the medical report to prove the rape the male doctor at primary health center denied to do and not only this when she went Jaipur for the medical examination the doctor over there only confirms her age not recommend the rape in the medical reports. When she went to the police station the female constables continuously bad mouthing the Bhanwari Devi and the police asked her to give her Lehenga as the evidence and went back to her village.

When the case was filed in the trial court the passed its judgment in the favor of Ramkaran Thakur. Then an appeal was filed in the high court where it was concluded that it was a case of gang rape which done with a revenge motive. All these judgments passed by the courts, aroused the women of NGOs and they filed a PIL in the Supreme Court to seek justice.

ISSUES RAISED

The question arises in this case was whether the guidelines enacted by the court is required for repudment of Sexual Harassment at workplace?

COURT'S DECISION

The Supreme Court held that women have a fundamental right to live a dignified life free of sexual harassment and for this purpose the apex court also passed various guidelines to prevent sexual harassment at workplace. The court also stated that the employers must established proper mechanism to resolve the cases of sexual harassment at workplace. Chief Justice J.S. Verma on behalf of Justice Sujata Manihar and Justice B.N. Kripal observed that sexual harassment is the violation of fundamental right under Art. 14(2)³²; 19[3] (1) (g)³³; 21(4)³⁴ of the constitution which ensures that the women have the right to work in any profession, business, or trade with a healthy and safe working environment. In this Supreme Court also defines Sexual Harassment. According to the court; any physical or unwanted touch or conduct or showing of pornography or any unpleasant comment or any kind of sexual favors or any unwanted sexual desires are included in the definition of Sexual Harassment.

ANALYSIS OF JUDGMENT

Though the Supreme Court provides the guidelines to prevent sexual harassment at workplace but these guidelines are not enough as it is the duty of the government to make sure that these guidelines are properly implemented. Not only new policies and approaches should be

³² Right to Equality

³³ Right to practice any trade, profession or carry any business

³⁴ Right to life and liberty

implemented to prevent and reduce the cases of sexual harassment as if no strict action has been taken on time then it would to decrease in number of women employees and eventually will led to diminished economy of the country as it can't be declined that in today's time women also have great contribution towards the economy. Not only the economy it also helps to ensure gender equality in the country as provided under the constitution.

CHAPTER 5. CONCLUSION & SUGGESTION

As India's economy is advancing to achieve its development goals, more and more women are joining hands in every field whether it is business or any kind of profession or any trade or we can social or society's upliftment. It is a positive step in the nation's development that women take an active part in the country's economy. Therefore in order to maximize the involvement of women and to encourage them to be financially independent to work and maintain themselves it is the duty of the government as well as society to provide her a safe and healthy working environment. If a woman has a fear of being molested or being harassed she can't work and if she is still working it will lead to a decline in her working ability. Therefore strong laws and mechanisms must be implemented in the country to provide a protection of a healthy and safe working environment so that more women must be encouraged to do work. It not only helps improve the country's economy but also ensures the gender equality that is guaranteed under the constitution of India.

Sexual harassment is become a great misery in recent times. Not only women these days men are also becoming victims of this but unfortunately there is no proper legislation provided for the men. The major question that arises when we talking about the male victim is Can a man file a complaint of sexual harassment against a woman?³⁵ It's high time for our nation to amend the existing laws and make the sexual harassment laws as gender neutral law in India. Men victims also have a right to get justice for the wrong that happened to him. As our constitution also guarantees equality before law and the equal protection of law to every citizen of India.³⁶

The question that the paper deals with is whether the screenshots or call recordings or any other kind of audio video recordings can be taken as evidence? It depends upon the facts and circumstances of each and every case. Also section 3 of the Indian Evidence act³⁷ by referring

³⁵ #me too reported by Vijay Nair founder of OML.

³⁶ Article 14 of Constitution of India

The Section 92 of The Information Technology Act, 2000³⁸ which provide admissibility of electronic evidence.

In my opinion it is the duty of the parents to teach their son to respect women. Proper awareness and education must be provided to women regarding their rights that they have and also educate them the difference between good touch and bad touch. Beside these the law must be implemented strictly and the cases dealt with sexual harassment and like crimes must be resolved at FastTrack basis and the punishment must be provided in a strict way to set an example in the society.

³⁸ The Indian Evidence Act, 1872 shall be amended in the manner specified in the Second Schedule to this Act.

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- ✓ Deputy Inspector General (DIG) of police & Anr v S. Samuthiram [SLP(C) No.31592 of 2008]
- ✓ Indira Jaising v. Supreme Court of India & Anr [(2003) 5 SCC 494]
- ✓ Junko Furuta Rape Case [1971-1989]
- ✓ Medha Kotwal Lele & ors V. Union of India & ors [(2013) 1 SCC 297]
- ✓ Mohini Jain v State Of Karnataka [1992 AIR 1858]
- ✓ Mukesh & Anr v/s state for NCT of Delhi & ors [(2017) 2 SCC (Cri) 673]
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- ✓ Ruchika Singh Chhabra v. M/S Air France India & Anr [LPA. No. 237 of 2018, C.M. Appl. Nos. 16802-03 of 2018]
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