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VICTIMIZATION OF WOMEN IN INDIA A STUDY IN SPECIAL REFERENCE TO SEXUAL HARRASMENT AT WORK PLACE

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ABSTRACT

With improved access to education and employment, millions of Indian women are entering the country's workforce today. Many working women face sexual harassment at workplace on daily basis. It is crucial therefore that as a country, we strive to eliminate work-place sexual harassment since women have the right to work in safe and secure environment. Protection of women is necessary for gender equality and development of nation as a whole. -Maneka Gandhi Sexual harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative as it affects women's right to life and livelihood. It is a violation of fundamental rights of a woman to equality as per Articles 14 and 15 & her right to live with dignity enshrined in Article 21 of the Constitution of India. India became the signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on July 9, 1993. In India, for the first time in 1997, a petition was filed in the apex court to enforce fundamental rights of working women, after the brutal gang rape of Bhanwari Devi a social worker from Rajasthan.

Key words: Sexual Harassment, Vishaka guidelines, POSH Act

INTRODUCTION

In India women are not safe. Heinous and heart tormenting crimes are being perpetrated over them every minute. Be it a girl at school, a sister at home or a strong corporate lady in the magnetic world of money; they are all vulnerable. Exploitation of women in India is not synonymous to uneducation. It is also in no way related to their exposure. If that would be true

women could have felt safer at home. Educated women working with some fine corporate firm would have never complained of harassment by their counter male colleagues. But that's not the prevalent scenario. Women is an epitome of shakti yet she is drained out of all her modesty and dignity by perpetrating such evil crimes over her. A women discharges so many important functions as daughter, sister then stepping into someone's life as wife, giving birth to a child as mother and at workplace as someone's employee.¹ It is well settled principle and not an issue of debate that physically she is a weaker sex. For the very first time this remark was made by the supreme court of United States of America in a case. Biologically also she is somewhere at loss, discharging so many functions she is somewhere standing on an unequal pedestal compared to male counterpart. So it is somewhere responsibility of the society to make her feel safer at her workplace.

A society cannot progress by crushing one gender of the society or by making her feel weaker section of the society.² If society is a vehicle women is an important wheel. She has all the rights to be felt safe and protected at her workplace. There are several constitutional provision in India safeguarding women rights. For instance, we have Article 14, Article 15 and Article 21. Article 14, though is general in nature yet it is there to safeguard equality before law under article 15 there is specifically use of word 'sex' in regard to prohibiting discrimination. Also Article 21 is there to safeguard life and liberty of working women in India. Also there is Convention On Elimination Of All Forms Of Discrimination Against Women, Maternity Benefit Convention. After this we have a leading case of *Vishaka v. State of Rajasthan*³ They all help us to know how women's rights in India are safeguarded at their workplace. We will address these key issues in paragraph one after the other Sexual harassment is a hazardous issue found in the workplaces all over the India which has become the main factor for reducing the quality of working life and job turnover. According to International Labour Organization, sexual harassment at workplace is a barrier towards its goal of achieving decent working conditions for all workers. Over the last few years, there has been awareness globally about the existence and extent of sexual harassment of women at the workplace.⁴ This occurrence of sexual harassment at workplace in India is actually infringing the fundamental rights of a woman under Article

¹ Hereinafter referred to as "the act" or "the sexual harassment act"

² *The Indian Penal Code, 1872 (Act No. 45 of 1860)*

³ (1997)6S.C.C. 323

⁴ *Ibid*

19(1) (g) of the Constitution of India. The main issue of sexual harassment at workplace in India came into major limelight in the Bharti Devi case of 1992, this incident unfolded the traumatic condition of women, with which one has to pass even after being subjected to a heinous crime of rape. The main objective of these statutes was that no women shall be subjected to sexual harassment at workplace in India. This paper sets the scene of this issue by examining its nature and the ways in which measures were taken to stop this by government and Human Rights also. It also discusses about the year 2013 for going down as a landmark year in Indian history for women rights protection.⁵

FEATURES OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT

1. The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
2. The definition of “aggrieved woman” who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private, and covers clients, customers and domestic workers as well.
3. While the “workplace” in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organised and unorganised, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment, including transportation.⁶
4. The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be; they are mandated to take action on the report within 60 days.

SEXUAL HARASSMENT OF WORKING WOMEN AND INDIAN CONSTITUTION

⁵ *The Indian Penal Code, 1872 (Act No. 45 of 1860)*

⁶ <http://wcd.nic.in/wcdact/womenactsex>

The Constitution of India talks of gender equality. Sexual harassment of any women at her place of employment is in totality against the principle of gender equality. It is also violation of the fundamental rights in particular Article 14, Article 15 and Article 21 of the Indian Constitution which enshrines principles of equality before law and prohibition of discrimination on grounds of religion, race, caste, sex and place of birth. Article 21 is also said to be violated by sexual harassment of women at workplace as it deals with the protection of life and personal liberty.

Any International convention not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of the constitutional guarantee. This is implicit in Article 51(c). Article 73 also is relevant in this regard.⁷

THE CREATION OF THE CONCEPT OF SEXUAL HARASSMENT

The term sexual harassment coined in 1970's by feminist activists, and their conception of sexual harassment was socio-cultural. Linfarily claims to have discovered the Phenomenon of sexual harassment⁸. Farelly spoke to many working women and discovered that this pattern was widespread. She does not say just where the term sexual harassment came from. Only that the male behavior eventually required a name and sexual harassment seemed to come about as close to symbolizing the problem as the language would permit¹⁴. Recognition of the problem led to the formation of working women united in 1975 to address the issue they labeled sexual harassment.

EVOLUTION OF CONCEPT OF SEXUAL HARASSMENT IN INDIA

In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, *sexual harassment of working women* was named and defined⁹.

This does not imply that there are no related laws in the Indian Penal Code that may be evoked when a woman is sexually harassed. However, related laws are framed as offences that either amount to obscenity in public or acts that are seen to violate the modesty of women under sections 294, 354 and 509 of IPC.

⁷ Carole Elizabeth Adams, *women clerks in Wilhelmine Germany* (New York Cambridge university press 1988).

⁹ Dr. Swarana Lata Sharma, "*Gender discrimination and Human Rights*", Gender based violence, p.154

An analysis of the crime in India reports reveals that up to 1991 the classification of offences such as murder, homicide and cheating did not document specific crimes against women apart from rape and kidnapping. The laws related to sexual harassment, sections 354 and 509 were subsumed under the category of 'other IPC crimes'. Hence the statistics were not produced separately in the absence of such a classificatory grid¹⁰, there by indicating that harassment of women was not yet viewed as a serious crime.

IMPORTANCE OF ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE

Sexual harassment is a serious form of sex discrimination and it should not be tolerated as it undermines equality at work by calling into question the integrity, dignity and well-being of workers. All workers, both women and men, have the right to a workplace that is protected, secure, free from discrimination and violence, and conducive to fulfilling one's roles and responsibilities as it is an arena where they spend a major percentage of their day. When sexual harassment occurs, there is a long lasting negative and traumatic impact on individuals including psychological suffering, physical suffering and professional losses. Workers suffering from sexual harassment are most unlikely to be highly productive. The negative impacts do not stop at an injury to the one individual. It has a ripple and multiplier effect on the rest of the workers in the organization, impacting the workplace and bringing negative consequences such as compromised team work, economic loss, impaired productivity, and hindered development. For the society at large, sexual harassment impedes the achievement of equality between men and women as it condones sex discrimination and sexual violence, and has detrimental effects on the development of the country as a whole and the well-being of people.

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

In 2012, India saw increased and strong calls for addressing violence against women, with the increasing number of reported cases of sexual harassment and violence against women. In this context, the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 was enacted to provide protection against sexual harassment of women at workplace and for preventing and addressing complaints of sexual harassment. The Act recognizes that sexual

¹⁰ *Business Week*, 18 March 1991.

harassment results in the violation of a woman's fundamental right to equality under Articles 14, 15 and 21 of the Constitution which provide for equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and protection of life and personal liberty. The Act includes key definitions and measures to be taken by different stakeholders for preventing and addressing sexual harassment at the workplace, which is further explained in Chapters III, IV, V, and VI of this guide. Section 28 of the Act mentions that its provisions shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, this guidebook should be read along with the Vishaka Guidelines, as well as rules when they are notified by the Government.

INDIAN PENAL CODE (IPC)

Sections 292: “anyone found selling, putting on hire, distributing, publicly exhibiting in pamphlets, papers, writings, drawings, paintings, representations, figures, or any other object, which is obscene shall be punished on first conviction with imprisonment for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five years, and also with fine which may extend to five thousand rupees”

Section 293: “whoever sells, hires, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in section 292, shall be punished on first conviction with imprisonment for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to seven years, and also with fine which may extend to five thousand rupees”

Section 294: “whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment for a term which may extend to three months, with fine, or with both” Section 354: “whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine or both”

Section 354 A: This section was added to the Indian Penal Code upon the presidential approval of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013. The Amended Criminal Law Act, 2013 recognizes and provides a clear definition of sexual harassment and the punishment for it through this newly added section

CASE STUDY

*B.R. Acharya and Qamar v. State of Gujarat and another*¹¹, The petitioners, who were probation officer in the pay scale of Rs. 425-700 had filed the petition claiming promotion to the higher post carrying the pay-scale of Rs. 550-900, mainly on the ground that officers junior to them were promoted to the higher post.

The contention of the petitioners was that they should be considered to be eligible for appointment to the post of Lady Superintendent and promotions given to the Lady Officers who were junior to them to such post should be quashed and set aside.

In *State of Kerala v. K. Kunihipacky*,¹² the question of preferring female lecturers in state colleges exclusively for women came under review. A male lecturer claimed that a female lecturer junior to him in experience had been promoted to a professorship in the same department, violating Article 16. Traditionally, only females had been appointed to teaching positions in women's colleges when available. The State argued that since the preference of females in women's colleges was an established practice, preference for a female teacher was proper.

In *Raghubans Saudagar Singh v. State of Punjab*¹³, the rule, which made women ineligible for various posts in men's jail except for the posts of clerks and matrons, was upheld by the Punjab and Haryana High Court. The Court observed:

It needs no great imagination to visualize the awkward and even hazardous position of women, acting as a warden or other jail official who has to personally ensure and maintain discipline over habitual male criminals, their own safety and security might be in danger if women were appointed to such offices.

¹¹ 2009 Cri.L.J. 4405

¹² AIR 1985 Ker 49

¹³ AIR 1954 SC 321

Again in a case against *Air India, Lena Khan v. Union of India*¹⁴ the regulations which required air hostesses employed in India to retire at the age of 35, with extension to age 45, but which allowed air hostess employed outside India to continue employment beyond age 45, was challenged as violative of Articles 14 and 15. The Supreme Court held that such discrimination should not be allowed merely because it complies with local law abroad. However, in the light of Air India's submission that it would phase out air hostesses recruited outside India at age 45, the Court concluded that no intervention was required at this time.

CONSTITUTIONAL PROVISIONS

The framers of our Constitution were well aware of the glaring inequality between the sexes in our male dominated society and they, in their own wisdom devised certain specific safeguards in the Constitution to make the concept of equality a living reality as far as women are concerned. These safeguards find explicit expression in the Preamble of the Constitution, the chapters on the Fundamental Rights and Directive Principles of State Policy.¹⁵ Such Constitutionally guaranteed rights go a long way in ensuring that women in India are protected from the problem of sexual harassment at the work place. The Preamble In this country "WE THE PEOPLE" gave to ourselves a Constitution which guarantees, Justice - social, economic and political, Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all; Fraternity, assuring the dignity of the individual and the unity of the Nation. The ideals enshrined in the Preamble of the Constitution are to be secured to all the citizens. Women fulfilling the conditions of citizenship are as much a citizen of India as any one else. Hence they are entitled to all the rights, obligations, duties and protection under the Constitution. The realisation of the ideals cherished in the Constitution is possible only when all the citizens - men and women have the necessary conditions for the advancement of their individual personality. The Preamble, which is a key of the Constitution, thus guarantees equality

¹⁴ [1982] 1 SCR 438

¹⁵ *Visaka v. State of Rajasthan* (1997) : *A.K.Chopra v. Apparel Export Promotion Council* (1999)

of opportunity and equal status to men and women. It directs that women shall not only have equal rights and privileges with men but also that the state shall make provisions - both general and special for the welfare and dignity of women.

CONCLUSION

Sexual harassment of women is global and widespread and is tolerated as a social phenomenon, in institutions and customs and to some degree in law. It is not exclusively a new phenomenon because the behaviours it describes are centuries old. Sexual harassment, no doubt is a complex social problem but in the recent decades, it has achieved new dimensions and has brought within its teeth children, youth and women. With the advance of industrialization and urbanization, this evil is gradually rearing its ugly head all over the world. It has touched new heights and dimensions in the numbers and operational patterns use of violence that even fatal attacks have become more common than they were some times ago. Sexual harassment may be homosexual as well as heterosexual. But the available data and court cases reveal that heterosexual mode is the most pervasive one. Women because of their oppressed and subjugated position in society are far more vulnerable to sexual harassment.

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