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## **SEXUAL HARASSMENT OF WOMEN'S AT WORKPLACE: A CURSE TO THE SOCIETY**

### **INTRODUCTION**

Sexual harassment basically means the demand for the unnatural sexual advancement which makes the person feel offended and uncomfortable to compete in the competitive world. Showing pornography, unwelcome touching, staring, request for sex, insult based on the sex will be amount to the sexually harassing behavior. Doing sexually harassment means violating the fundamental right of the person which is guaranteed by the constitution of India by Article 14 i.e. the right of Equality through Article 19 Freedom for the living the deserving life and from Article 21 Right to life with dignity.

As a Life is full of dignity is given by the constitution of India then No one has the right to take away from the women.

This Article basically deals with the international and domestic prospective of the sexual harassment and the objective of the Posh Act. And the case law of Bhanvari Devi Rape Case, Vishaka vs. State of Rajasthan.

### **MEANING OF SEXUAL HARASSMENT**

Sexual harassment means that the unnatural demand for sex which hampers the dignity of person and brings the person in the mental trauma. As a result, the fundamental rights of a person are being infringed.

Sexual harassment includes the unwelcoming sexual demand and advancement, showing pornographies, taunting, body shaming, touching and requesting for sex by taking undue influence of their position or post.

In most cases, sexual harassment in the workplace refers to two types of indecent behavior:

- **Quid pro quo** (literally, "this for that") is a phrase that means "this for that."
  - Promise of preferential/discriminatory treatment in the workplace, whether implicit or explicit.
  - Threatening her current or future employment position, whether implicit or explicit.<sup>1</sup>
- **An Unfriendly Workplace**
  - Creating a climate at work that is unfriendly, frightening, or offensive
  - Abusive treatment that could jeopardize her health or safety.<sup>2</sup>

### **IS SEXUAL HARASSMENT IS JUST DEMAND FOR SEX OR MORE THAN THAT?**

According to my prospective it is more serious than just a sex. If it is just a sex then the men can ask this from the prostitutes or from their wives why they are dominating their colleagues or the subordinate why they are taking the benefit of their posts or designation and I found only one conclusion of the above question and that it is only a psychological thing which differ from people or may be due to lack of sex knowledge.

It is a heinous crime that can put a victim in trauma and her fundamental right to live life with dignity is being infringed.

### **INTERNATIONAL PROSPECTIVE OF SEXUAL HARASSMENT**

A Sexual Harassment of women is a universal problem in many countries such as United States and India. Women's of the world is the problem of sexual harassment which makes the question harassment of women's can be vary to occupation by occupation.

The Clarence Thomas confirmation hearing for the of United States Supreme Court Catapulted

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<sup>1</sup> Government of India Ministry of Women and Child Development, Handbook on sexual harassment of women at work place (Prevention, Prohibition and Redressal) Act2013, Nov 2015, <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

<sup>2</sup> Government of India Ministry of Women and Child Development, Handbook on sexual harassment of women at work place (Prevention, Prohibition and Redressal) Act2013, Nov 2015, <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

sexual harassment to the forefront of the American public consciousness.<sup>3</sup>

Nowadays, this problem creates a difference between the men and women. And this will give the question mark on the law as well as in the administration. The percentage of the registered cases on sexual harassment differ from country to country.

Women's rights are human rights, according to the United Nations and other international organisations, and violence against women is a violation of her human rights.<sup>4</sup>

Though the action it portrays is centuries old, the word "Sexual Harassment" is relatively new. It is thought to have first appeared in North America in the mid-1970s, then in the United Kingdom in the 1980s, and finally in India in the 1990s.

For instance, we can say that this kind of behavior violates the human right of the victim.

The protection from sexual harassment is necessary because everyone has a right to work with the dignity and it is a pervasive component element of human right and no one can exhaust the human right and fundamental right of any person.

There are some organizations are specifically work for the protection from the sexual harassment and violation of the women. Also, the United Nations is also working for the protection of women from harassment and the fact is that every organization is under obligation to provide a safe and healthy working environment to the women.

### **DOMESTIC PROSPECTIVE OF SEXUAL HARASSMENT AT WORKPLACE**

Equality of status and opportunities is guaranteed in the preamble of the Indian Constitution, and Article 14 of the Indian Constitution guarantees equality to individuals as a basic right. Even then, women are subjected to harassment.

#### **In the case of VISHAKA VS. STATE OF RAJASTHAN**

Supreme Court first time recognize 'sexual harassment of women at the work place' and court also held that sexual harassment infringe the fundamental right of the women and it also creates

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<sup>3</sup> Volno.12 |Issue 1, Beverley H. Earle Gerald A. Madek, An International Prospective on Sexual Harassment Law, (Article 1) Law & Inequality: A Journal of Theory and Practice  
<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1528&context=lawineq>

<sup>4</sup> An Article by Dr. Suman Gupta, —Law relating to Sexual Harassment of Women: Problems and Strategies| at p.225, 2006.

the 'Gender discrimination' in the society which leads to the violations of the fundamental rights of the women.

As a matter of fact, Sexual Harassment consists of the gross violation of the right of the victim and it cannot be excused by saying it is a natural behavior. Contrary to the perception it is a critical problem and it is also a strong manifestation of discrimination on the basis of sex.

Basically, in India we came to know about sexual harassment of women by the case of the Bhanwari Devi. This was the first rape case which was determined as the case of sexual harassment of women at the work place.

### **BHANWARI DEVI RAPE CASE**

Bhanwari Devi was the name of a woman. In a small Rajasthan community, she worked as a social worker. She saw a child marriage of a one-year-old girl being solemnized by members of her community one day and decided to stop them. She stopped the marriage and was gang raped by numerous males in her village as a result. She also filed a complaint with the local government, but nothing was done about it. Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere every day irrespective of their location.<sup>5</sup>

It also demonstrates the extent to which sexually inappropriate behavior in the workplace can escalate if nothing is done to prevent it.

As a result, the NGO VISHAKA and other women's organisations launched a Public Interest Litigation (PIL) against the State of Rajasthan and the Union of India based on the facts of the Bhanwari Devi Rape Case. Their motive for filing this public interest litigation was protecting the interest of the women and saving them from harassment at the workplace. Having the safety of life and right to equality is the fundamental right of women. And fundamental rights of the individual are protected by the government hence the NGO is filing the case for protecting the women from being harassed.

In the case of **VISHAKA VS. STATE OF RAJASTHAN**

**BENCH** was headed by **CJI Sujata V. Manohar, B.N. Kripal**

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<sup>5</sup> Government of India Ministry of Women and Child Development, Handbook on sexual harassment of women at work place (Prevention, Prohibition and Redressal) Act 2013, Nov 2015, <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

By using the facts of the Bhanwari Devi rape case the Vishaka NGO came forward for proving the justice to the women who are being harassed. In this case they are filing the writ for not enforcing the fundamental right of the harassed women. Under Article 14, 19 and 21 of the Constitution of India. Article 14 talks about the Equality before law and Equal protection of law, Article 19 talks about the Freedoms and Article 21 talks about the right to life with personal liberty.

Under the given petition the NGO wants to aim and focused on the real meaning of ‘Gender Equality’ and the immediate cause for filing on this writ petition for providing justice for the lady who was brutally gang raped even when she was a social worker. After all arguments and hearing, supreme court created a legally binding guideline basing it on the right to equality and life with dignity as it is guaranteed by the constitution of India and it was the first case in which sexual harassment of women at work place was defined and court also included in this judgment that the:–

- An explanation of what sexual harassment is.
- Providing the instruction to every institution should have the cell for preventing the women from sexual harassment.

According to the Supreme Court, sexual harassment is defined as any uninvited sexually determined physical advances, which includes requests for sexual favors and sexually suggestive remarks directed at women. The Supreme Court also states that it is a duty of the employer to provide a safe and healthy environment to the women working in that particular organization. The Honorable Supreme Court also gives direction to Legislature to make the appropriate law for the protection of women from sexual harassment of women at the work place.

And POSH was enacted after 16 years of issuing the direction to the legislature. Before the enactment of POSH Act cases related with the sexual harassment of women at work place was trialed as per the guidelines by the Honorable Supreme Court in the case of VISHAKA VS. STATE OF RAJASTHAN.

### **OBJECTIVE OF THE POSH ACT**

- Protection of women from Sexual Harassment.
- Aim at encouraging “gender equality”.

- To deal with gender - based violence at the workplace.

## **SOME DEFINITION IN THE POSH ACT**

### **❖ Workplace**

According to the Prevention, Prohibition and Redressal Act 2013. Workplace sexual harassment is given under section 2(o) of the Posh Act which talks about the places which are included in the ambit of the workplace.

Any harassment which was taken place at the place of work will amount to sexual harassment of women at work place. Workplaces also include those places which an employee has visited in the course of employment.

Workplace is defined as any location frequented by women within the course of their employment. It is not necessary that the office place is only a workplace but also any site or any other place visited by the women during the course of the employment also comes in the ambit of the workplace. If any transport provided by the employer to their employee's then that transport also amounted to a workplace.

The term "workplace" also refers to the unorganized sector, which is defined as a business owned by individuals or self-employed workers that is engaged in the manufacture or sale of goods or delivering any type of service and employs less than ten people. The idea of extended workplace is incorporated into the preceding definition of workplace, which means it encompasses any place visited by an employee as a result of or during the course of employment, as well as transportation provided by the employer for such journeys.<sup>6</sup>

### **❖ An Aggrieved Women**

The POSH Act affirms all women's rights to safety and security, regardless of their age, occupation, or employment position. Any women working through an agent or they are engaged through the contractor or may be working on a daily basis. If they come in the ambit of employment then they are protected here.

The Posh Act defines an aggrieved woman as a woman of any age who is employed or unemployed and claims to have been the victim of sexual harassment. Women who work in a

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<sup>6</sup> An article by Ruchira Baruah, A critical analysis of the laws available in India against sexual harassment at workplace, <http://www.legalservicesindia.com/article/2545/The-Law-Against-Sexual-Harassment.html>

residential or home setting, as well as those who live in a dwelling, are included. It covers domestic workers, such as women who are paid in cash or in kind to help with household chores in any family. She could be appointed by the government or by a third-party organisation. She might work full-time, part-time, or permanently. It excludes any members of the employer's family.

## **SEXUALLY HARASSING BEHAVIOUR**

- Unwelcome touching
- Staring or leering
- Suggestive comments or jokes
- Sexually explicit pictures or posters
- Request for sex
- Insult or taunt based on sex.

For example, we can consider workplace sexual harassment to be a type of "gender discrimination" because it infringes on women's fundamental rights and violates Articles 14, 15, and 21 of the Indian Constitution. Sexual harassment in the workplace makes women feel uneasy and makes it difficult for them to work in that firm.

## **PUNISHMENT UNDER INDIAN PENAL CODE**

Punishment of sexual harassment is defined in the Indian penal code under section 354A and 509 of IPC.

### **SECTION 354(A) OF INDIAN PENAL CODE-**

#### **Sexual Harassment and Punishment for Sexual Harassment**

1. A man committing any of the following act-
  - I. Uninvited and explicit sexual overtures; alternately, physical contact and advances involving unwelcome and explicit sexual overtures.
  - II. A solicitation or demand for sexual favours; alternatively
  - III. Displaying pornography against a woman's will; or
2. Any man who commits the offence listed in clause (I), clause (II), or clause (III) of subsection (1) must be punished with a period of imprisonment of up to three years, or a fine, or both.

3. Any person who commits the offence described in clause (IV) of subsection (1) must be punished by imprisonment of any class for a duration up to one year, a fine, or both.

We can conclude from the given section that if the stated element, i.e. making sexually colored remarks, a demand for sexual flavour, or showing pornography against the women's will, is done against the women, the ladies can bring a lawsuit against that man. This section is also inserted by the virtue of criminal law amendment act 2013.

## **SECTION 509 OF INDIAN PENAL CODE-**

### **Word, Gesture or Act Intended to Insult the Modesty of the Woman**

Anyone who, with the goal of insulting a woman's modesty, says something, makes a sound or gesture, or shows something with the intent of having the word or noises heard is guilty. Or that such a gesture or object is visible to such a lady, or that it intrudes on her personal space. Shall be penalized by up to three years of simple imprisonment, as well as a fine.<sup>7</sup>

A woman can file a complaint under section 509 of Indian penal code this section states that if any women found that any person is clicking the pictures or making the videos of women and intrudes upon the privacy or if any sound or gestures is seen and listen by the victim then she can file the complaint against the offender. And the punishment can be extended to 3 years or punishment along with the fine.

## **CONCLUSION**

From the entire research we can conclude that in the case of **Vishaka vs. State of Rajasthan**, sexual harassment of women at work was brought to light. Several laws have been enacted to protect women from workplace harassment, and because of workplace harassment, fundamental rights such as Article 14, 15, and 21 of the Indian constitution are being infringed, and "gender discrimination" will continue to exist in society. Also, the Hon'ble Supreme Court directs the Legislature to implement adequate laws for the protection of women from workplace harassment, and POSH 2013 is enacted after 16 years. The legislature established harsh laws as a result of the Criminal Law Amendment Act of 2013 for the protection of women.

It took the huge time to formulate the legislation which would be appropriate for dealing with the cases related to the sexual harassment of women at the workplace.

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<sup>7</sup> IPC, Sec 509, 2019



As the corporate culture is growing, it is an obvious thing that the crime related to the employee safety, and the protection of the employee at workplace is required and for providing protection we need a proper codified law to be prevailed in the Indian Territory.

But unfortunately, it took 16 years for the POSH Act to be formulated and implemented, while the Apex Court gave the direction to Legislation in the case of **Vishaka vs. State of Rajasthan** to formulate the law which would deal with the cases of Sexual Harassment of women at the work place.