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EMPOWERMENT OF WOMEN FOR SEXUAL HARASSMENT AT WORKPLACE

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INTRODUCTION

In the new era of access to education and employment, millions of women are engaging into the country's workforce in all over the world. Today India itself by 2050 will become most populated country by the increase of 323 millions, the largest population increase of any country, where increasing women's labor force participation by 10 percentage points could add \$700 billion to India's GDP by 2025 (or a 1.4% increase) But at present a recent study also show that 70 % labor women won't talk about sexual harassment at workplace. It is important therefore for a country that we must strive to eliminate sexual harassment at workplace as women have a right to work in safe and secure environment. Today's world is accustomed to the term Sexual harassment. Sexual harassment can be informed as behaviour. It can, in general, called unwelcome conduct of sexual nature. Sexual harassment at the workplace is a universal problem in the world whether it be a developed nation or a developing nation or an undeveloped nation, atrocities and cruelties against women are common everywhere. It is a giving adverse effect on both men and women as the number of cases involving female on male workplace sexual harassment that have resulted in significant awards for the male employee. These include instances of retaliation for refusing sexual advances, unwelcome touching and caressing, and being subjected to offensive sexual comments and jokes. Male on male workplace sexual harassment claims is becoming more common. It is seen to be happening more with women gender; therefore it is a severe problem in the workplace, and it has become one of those issues that receive a lot of negative attention.

Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's computing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through

physical and emotional suffering. A safe workplace is, therefore, a woman's legal right. It is a form of gender discrimination which violates a woman's fundamental right to equality and right to life, mentioned under Article 14,15 and

21 of the Constitution of India. And these articles ensure a person's right to equal protection of life and personal liberty.

That's why India's legislation took a significant step and introduced The Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 enacted by the Ministry of women and child development in 2013 as the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment.

WHAT IS SEXUAL HARRASSMENT?

Sexual harassment is a behavior which cannot be changed by some law, but can only be changed by change of mentality and upbringing. Sexual harassment at workplace is not just against women but also against men. A man who was probably going to assault a woman colleague was harassed by his own boss.

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances, a demand or request for social favors, sexually colored remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature.¹

Unwelcome Behavior is the critical word. Unwelcome does not mean "involuntary". A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomes a request for a date, sex oriented comment or joke depends on all the circumstances.²

Only women are not subjected to sexual harassment men are also being equally harassed by their supervisors or counterparts. There are a number of cases involving female on male workplace sexual harassment that have resulted in significant awards for the male employee. These include instances of retaliation for refusing sexual advances, unwelcome touching and caressing, and being subjected to offensive sexual comments and jokes. Male on male workplace sexual harassment claims are becoming more common.

Sexual Harassment includes many things: 1. Actual or attempted rape or sexual assault.

2. Unwanted deliberate touching, leaning over, cornering or pinching.

¹ Tripathi, Dr. S.C., Women and Children, Central Law Publications

² Keyal, Nikunj, Sexual Harassment of Women at Workplace, legalsevicesindia.com

3. Unwanted sexual teasing, jokes, remarks or questions.

4. Whistling at someone.

5. Kissing sounds, howling and smacking lips.

6. Touching an employee's clothing, hair or body.

7. Touching or rubbing oneself sexually around another person.

GUIDELINES AND NORMS RELATING TO SEXUAL HARASSMENT AT WORKPLACE IN INDIA

Before 2013, there was no specific act relating to sexual harassment at workplace. The only guidelines governing the country about the said topic were the Vishaka Guidelines. These guidelines were devised from a landmark case of: Vishaka and others V. State of Rajasthan. **Pre-Vishaka scenario:**

Before the Vishaka guidelines came into picture, the women had to take matter of sexual harassment at workplace through lodging a complaint under Section 354 and 509 of Indian Penal Code.

Sexual harassment was a serious issue and it still is, it was needed to be given priority and measures were decided to be taken to tackle this problem. Government, Employers, Employees, Women Organizations all were thinking how to eliminate this menace from the society.

Everybody wanted to prevent sexual harassment as prevention is the first step to prohibit or abolish any hazardous thing from the society. To achieve this, one needs legislation as a tool based on that the government and the organizations will be able to make strategies and policies to remove this issue.

As all know sexual harassment is universal problem which is kind of violence against women. International community has recognized in their international treaties and documents the free from sexual harassment as a human right for women. All the legal instruments dealing with this matter have laid down protection of life and liberty and these instruments have been used as a source to prevent and address the issue.

In India, till the Vishaka judgment came there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the convention on the elimination of all

forms of discrimination against women (CEDAW). Even the constitution of India had grounded provisions in the form of fundamental rights of life and liberty, the right against discrimination and the freedom to practice any trade or profession or to carry on any occupation. ¹ **Summary of Vishaka case:**

Bhanwari Devi was a social worker (saathin) at rural level in a development program initiated by State Government of Rajasthan, aiming to curb the evil of child marriages in villages. As part of her work, Bhanwari Devi, tried to stop Ramkaran Gujjar infant daughters marriage. Nevertheless, marriage took place but Bhanwari Devi was not forgiven for her efforts to stop marriage. She was subjected to social boycott, and in September 1992 was gang raped by five men including Ramkaran Gujjar in front of her husband. The days that followed were filled with hostility and humiliation for Bhanwari and her husband.

The only male doctor in the Primary Health Centre refused to examine Bhanwari and the doctor at Jaipur only confirmed her age without making any reference to rape in his medical report. At the police station too, the women constables taunted her throughout the night. It was past midnight when the policemen asked Bhanwari to leave her lehenga behind as evidence and return to her village. She was left with only her husband's bloodstained dhoti to wear. Their pleas to let them sleep in the police station at night were turned down. The trial court acquitted the accused, but Bhanwari was determined to fight further and get justice. She said that she had nothing to be ashamed of and that the men should be ashamed due to what they had done. Her fighting spirit inspired fellow saathins and women's groups countrywide. In the months that followed they launched a concerted campaign for justice for

Bhanwari. This provoked women's groups and NGOs to file a petition in the Supreme Court of India. As part of this campaign, the groups had filed a petition in the Supreme Court of

India, under the name 'Vishaka', asking the court to give certain directions regarding the sexual harassment that women face at the workplace. The result is the Supreme Court judgment, which came on 13th August 1997, and gave the Vishaka guidelines. Supreme Court judgment in the case of Vishaka and others V. State of Rajasthan regarding sexual harassment of working women. In the case of Vishaka and Others V. State of Rajasthan and Others (JT 1997 (7) SC 384), the Hon'ble Supreme Court has laid down guidelines and norms to be observed to prevent sexual harassment of working women.²

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

There are many loopholes in this act. Some of them are:

¹ Lotiya, Payal, Case study- Vishaka V. State of Rajasthan, indianlegalties.blogspot.in

² ibd

1. Address the aspect of victimization

It is a common feature in most sexual harassment cases that the employer or the person against whom a complaint is filed retaliates against the complainant through counter-complaints, dismissing the services of complainant, creating a hostile work environment etc. There is no provision in the Act or the Rules which deals with this aspect, making it a tough call for women to approach the mechanism under the Act.

2. The Act is biased against urban-office conditions

It does not provide the same civil remedy to domestic workers as it does to other women. Complaints from domestic workers have to be mandatorily forwarded to the Police Station, regardless of whether they want to use the criminal justice system or not. The civil remedy of compensation etc. is absent in their case.

3. The onus of implementation of the Act is on the Employers, whereas the state should also hold some responsibility for its enforcement

The Act places main responsibility on the employer for implementation and leaves the State largely out of the purview of responsibility. There is no set-time frame for the LCC's etc to be notified and no punishment for government officials for failing to do so. The role of the state especially the state government is negligible in terms of ensuring the enforceability of the Act.

4. Does not deal with sexual harassment faced by males

This act has completely ignored the sexual harassment faced by the males in their work place. Sexual harassment faced by males often goes unnoticed. This happens more because of the social ridicule that men would face if they would report any case of sexual harassment being faced by them especially in a patriarchal country like ours. Thus, they instead choose to suffer in silence and very often there are no reports of cases of sexual harassment faced by men at workplace. For this purpose, the head of the Internal complaints Committee should not be gender specific for the males too could be subjected to sexual harassment at workplace.³

5. Awareness

³ Dogra, Asawari, Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013: A Critical Analysis, Akademike

The need of the hour is awareness generation regarding various aspects of the act. This can be done through various ways. A series of online courses for awareness generation of the Act for basic level of awareness in a form of a module should be created. Home Ministry should play a bigger role like advertising and taking measures to sensitize the youth. The employers must be assigned a duty to devise a sexual harassment policy and that should be prominently displayed within the premises with complete details on the procedure for making a complaint. There is vagueness pertaining to the definition of what exactly constitutes sexual harassment. It might be a very subjective experience for each woman. Hence, women might often be unaware about the citation of difference between physical and sexual harassment. Hence, a clarity pertaining to the same must be incorporated.

6. Other Recommendations

The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act and other matters connected therewith.⁴

Prosecution of cases under the Act, role of different officers/agencies responsible for implementing the provisions of the Act. Section 10(1) of the Act regarding the conciliation is contrary to the nature and spirit of the Vishaka Guidelines. Due to lack of witness protection, witnesses are not willing to come forward to support the women concerned. Thus, we suggest a protection mechanism to be incorporated within the act.⁵

EMPOWERMENT OF WOMEN FOR SEXUAL HARASSMENT AT WORKPLACE

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Preventive Steps:

⁴ Dogra, Asawari, Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013: A Critical Analysis, Akademike

⁵ Dogra, Asawari, Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013: A Critical Analysis, Akademike

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality to this obligation they should take the following steps:

- a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- b) The rules or regulations of Government and Public Sector bodies relating to conduct and discipline should include rules and regulations prohibiting sexual harassment and provide for appropriate penalties in such against the offender.
- c) As for private employers, they should take steps that include the aforesaid prohibitions in standing orders under the Industrial Employment (Standing Orders) Act, 1946.



- d) Appropriate work conditions and environment should be provided so as to not make a woman employee feel disadvantaged in connection with her employment.

3.

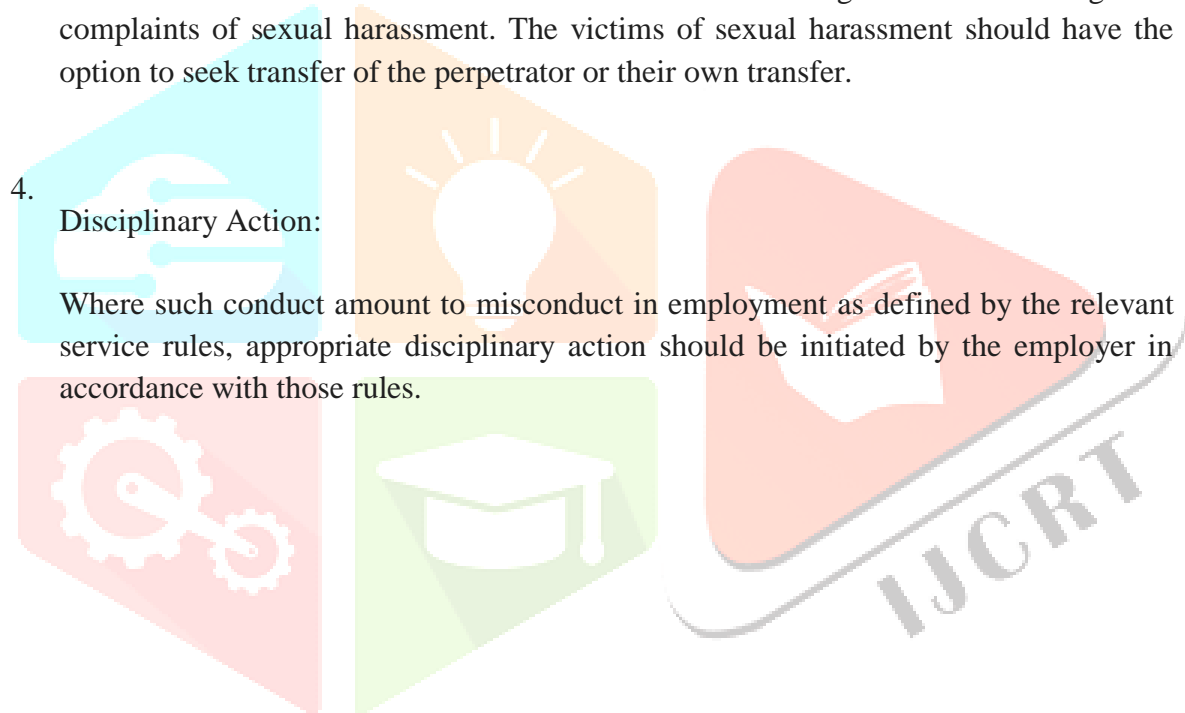
Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

4.

Disciplinary Action:

Where such conduct amount to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.



5. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.



6. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

7. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

8. Third Party Harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

9. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

CONCLUSION

Sexual harassment is a serious problem in the workplace and it has become one that receives a lot of negative attention. However, India is a late entrant in formalizing sexual harassment at workplace as a penal offence punishable with imprisonment and penalty. The harsh reality of sexual harassment cases at workplace is that there is more to worry about under-reporting than people misusing the law. With the advent of the present legislation, a paradigm shift can be noticed in the way employers are made liable for the breach of law by its employees. Until the enactment of this law, vicarious liability on sexual harassment at the workplace was non-existent. However, while the Government of India has been taking steps to monitor implementation of the 2013 Act in government offices, there is an absence of mechanism to check execution in the private sector. The damage that is happening as a result of state apathy is unpardonable and irreparable.

