

## Sexual Harassment of Women at Work Place in India: Emerging Perspective and Issues

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### INTRODUCTION

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights, enshrined in the Constitution of India. It is yet another form of violence against women reflecting patriarchal mindsets and gender based discrimination that women experience at work. It is also a manifestation of power relations, as women are much more likely to be the victims of sexual harassment because of their already existing vulnerability, insecurity, and social conditioning to accept discrimination in silence. Work undertaken by women is grossly underestimated, under-valued and subject to gender based discrimination in terms of disparities in wages, access to and control over resources, lack of infrastructural support and, above all, non-recognition of unpaid care work. Despite a plethora of legislations that attempt to remove inequalities in the workplace, India is witnessing a steady decline in the participation rate of women in the labour workforce. Protection against sexual harassment and the right to work with dignity and non discrimination as per treaties on Human Rights of women and ratification of international conventions by the Indian Government (e.g. United Nations Convention on the Elimination of all Forms of discrimination against Women, International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, Beijing Platform for Action, ILO Conventions etc). 1997 was a turning point in this regard. It was a watershed moment in how we respond to sexual harassment of women when we understand it through a constitutional equality lens. The Vishaka Guidelines (Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384) provided us with a blue print for where we needed to go for developing a rights-based understanding of and response to an issue historically dismissed as “no way to treat a lady.” It gave us the equality yardstick to measure sexual harassment of women and provided a means to enable systems, such as workplaces, to respond effectively to the elimination of such violation, for the benefit and health of all workplaces. It was a step towards creating responsible mind sets. It was user friendly and accessible. Today, we have the Sexual Harassment of Women at Workplace, (Prevention, Prohibition and Redressal) Act, 2013. Given that it's early days, every effort to refine and fine tune such legislation can make it a user friendly constitutional tool in the hands of employers and employees to create healthy and safe workplaces and safeguard the vision of Vishaka, one reaffirmed by the Justice Verma Committee (2013).

With the increase in urbanisation and industrialisation, women employment has also gradually increased over the period. However, most of the female workers (95.9 percent) are engaged in unorganized sector of economy. The female workers are more than male workers in unorganized sector. The employment of women workers in public sector and private sector were reported to be 3.17 million and 2.88 million respectively during the year 2011. The highest numbers of women workers were employed in southern zone whereas the lowest numbers of women workers were employed in Andaman & Nicobar Islands. Women employment in organized sector has been reported significant in the developed states while women's employment in private sector has been found high in the states Maharashtra, Delhi, Kerala, Andhra Pradesh, Karnataka and West Bengal. Overall women employment has increased in urban sector however, women employment in agriculture sector has declined both in rural and urban sector. Similarly, majority of the employed women were engaged in manufacturing and community, social and personal services in private sector. The proportion of women's employment in the private sector was recorded low (46.74 per

cent) as compared to public sector (53.25 per cent). Women employment has increased significantly in services sector. Women account for 32 per cent of the workforce in the informal economy, including agriculture and 20 per cent of the non agricultural workforce. About 118 million women workers are engaged in the unorganized sector in India, constituting 97 per cent of the total women workers in India.

## SEXUAL HARASSMENT OF WOMEN

Violence against women is experienced by women of all ages and social classes, all races, religions and nationalities, all over the world. It is overwhelmingly perpetrated by men (Krug et al., 2002). It is the most pervasive violation of human rights in the world today. Its forms are both subtle and blatant and its impact on development profound. But it is so deeply embedded in cultures around the world that it is almost invisible (Charlotte, 1997). Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement, and violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men (United Nations, 1993). The United Nations Declaration on Violence against Women provides a basis for defining gender-based violence. According to Article 1 of the Declaration, violence against women is to be understood as:

*"Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life" (United Nations, 1996).*

The experience or threat of violence affects the lives of millions of women worldwide, in all socio-economic and educational classes, cutting across boundaries of wealth, race, religion and culture thus violating and impairing or nullifying the enjoyment by women of their human rights and fundamental freedoms. Acts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the State, instil fear and insecurity in women's lives and are obstacles to the achievement of equality and for development and peace. The fear of violence, including harassment, is a permanent constraint on the mobility of women and limits their access to resources and basic activities. High social, health and economic costs to the individual and society are associated with violence against women. Violence against women impoverishes society economically, politically and culturally, by limiting the active role that women can make in the development of their community. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

Crimes against women are on the rise, along with crimes in general. The brunt of the resulting violence is borne by the marginalized sections of society, women in particular. Most crimes against women go unreported for understandable reasons: attached social stigma, drawbacks in legal mechanism, fear of retaliation and so on. Institutional indifference makes matters worse. It is almost impossible to lodge a complaint against men in the police and the armed forces, or in government services. Importantly, crimes against women have roots in the male dominated socio-economic, legal and political order. Assaults on women are often visibly associated with their social status, their communal, and ethnic and caste identifies (Singh and Pandey, 2009). Police records show that reported crimes have been rising. Violence against women is of undoubted important in the context of assessing women's status. However, the commonly used incidences such as the gender development index and gender related empowerment index ignore this aspect of the well being of women. Crimes against women identified under the IPC are the following: (1) rape; (2) kidnapping and abduction for different purposes; (3) homicide for dowry, dowry deaths or attempts to commit such crimes; (4) torture, both mental and physical; (5) molestation; (6) sexual harassment; and (7) importation of girls. Various crimes are identified under special and local laws, enacted from time to

time to deal with specific social and economic problems effecting women. These are (i) Commission of sale; (ii) Immoral traffic; (iii) indecent representation of women; (iv) Dowry cases (Singh, 2010).

In India, we have unique situation of co-existence of all forms of violence especially of elimination of women, e.g. selective female foeticide, female infanticide, bride burning and sati. The incidence of violence of all forms within family has also gone up. Even today, various forms of violence against women are prevalent in our society, though many cases remain unreported due to cultural norms, apathy or ignorance. They may manifest themselves directly in wife battering, abduction, eve-teasing, verbal abuses or verbal rebukes. Women on many occasions are victimized by all sorts of discriminations, deprivations and obstructions in goal achieving and responses. These incidents may occur in the family, offices, agricultural fields, industries or even public places. It sounds surprising that on animal level predatory aggression (killing and eating) occurs between the species and not within the species, but a human being, the highest on the evolutionary level, kills another human being of his own species (Srivastava, 1988). Inflicting and experiencing violence in many subtle forms causing and suffering mental pain in day-to-day life has become ways of our world in inter-personal relationships. The cruelty, the hate that exists in ourselves is expressed in the exploitation of the weak by the powerful and the cunning (Krishnamurthy, 1977). The worst part of the problem is that women today are not feeling safe and secured even in the family. The concept of home, sweet home is no more, so far many women, who suffer violence against themselves by the members of the family. Home is no safe place when it comes to aggressive behaviour. Fitz and Gerstenzang (1978) observe that episodes of verbal or physical aggression are most likely to occur in the home and the relatives (such as parents' offspring and spouses) were the most frequent targets of aggression. Steinmetz and Straus (1973) described the family as "cradle of violence". Stratus (1975) drawing from incidences of violence between spouses called "the marriage license as a hitting license". Crime against women constituted about 9.6 per cent against the total IPC crimes in India. Crimes against women constituted 11.2 per cent in 2013. Assam, Tripura, Rajasthan, Andhra Pradesh, Haryana, Odisha and West Bengal have recorded high rate of cognizable crimes against women. Nagaland, Manipur, Tamil Nadu, Meghalaya, Sikkim, Uttar Pradesh and Uttarakhand recorded comparatively low rate of cognizable crimes against women.

Haspels, Kasim, Thomas and Mckann (2001) have defined sexual harassment as clear form of gender discrimination based on sex and a manifestation of unequal power relations between men and women. Further Haspels et al state that sexual harassment at workplace is a form of gender discrimination because decisions at work are based on gender which is an attributed characteristic rather than on qualifications or job performance of the employee. From this point of view it can be understood that sexual harassment at workplace is form of gender discrimination targeted towards women. Further it can be stated that sexual harassment is not only discrimination against women at work based on gender, but is also a form of gender based violence. Gutek and Morasch (1982) compared sexual harassment of women at workplace with rape to show that they share common features. Exercise of power by one person over another exists in both. Just as rape is sexual intercourse that is unwanted, sexual harassment includes sexual attention that is unwelcome. As explained by them in rape, men use their greater physical strength to engage in sexual activity with women and in sexual harassment men use their superior organisational position to elicit sexual favors from women. It can be concluded that whenever women are sexually harassed or abused at workplaces it involves sexual coercion, intimidation, deprivation of their right to work in a violence free atmosphere, and hostile work environment that affects their safety, well being and health. Therefore it can be arrived at that sexual harassment of women is form of discrimination and violence based on gender which has grave outcomes on employment of women. Therefore it forms a suitable case for intervention from the perspective of human rights.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms

of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as 'natural' male behaviour or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business"; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large. Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

As defined in the Supreme Court guidelines (*Vishakha vs State of Rajasthan*, August 1997), sexual harassment includes such unwelcome sexually determined behaviour as:

- ✧ Physical contact
- ✧ A demand or request for sexual favours
- ✧ Sexually coloured remarks
- ✧ Showing pornography
- ✧ Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example, leering, telling dirty jokes, making sexual remarks about a person's body, etc

Sexual harassment refers to the unwelcome sexual advances, request for sexual favor and other verbal or physical conduct of a sexual nature by males towards females (equal employment opportunity commission 1980). *There are three dimensions of sexual harassment. (Fitzgerald and Drasgow 1995):*

- ✧ **Gender Harassment:** This dimension encompasses a verbal and non verbal behavior generally not aimed at sexual cooperation; rather they convey insulting, hostile, degrading and sexist attitude about women.
- ✧ **Unwanted Sexual Attention :** It includes both verbal and non verbal which ranges from repeated, non reciprocated, request for dates, intrusive letters and phone calls, touching, grabbing and cornering; and gross sexual imposition or assault. Although frequently experienced as intimidating or coercion, it can be distinguished from the third category (sexual coercion) by its lack of job related losses or benefits, either explicit or implicit.
- ✧ **Sexual Coercion:** It is the classic instances of quid pro quo harassment. Behavior of this type refers to bribes or threats, whether explicit or subtle, that conditions some job-related benefit on sexual cooperation. It is almost universally recognized and labeled as harassment, it perhaps not paradoxically also the latest common.

Violence against women is a cause of concern for the policy makers and administrators. Sexual harassment at work place is gradually increasing with the increase in urbanization, industrialization and women employment in organized sector. Some of the administrators and supervisors usually have skeptical ideas about the occurrence of sexual harassment. According to them, it depends on the perception of an individual, how one takes an action. For instance, some individuals might take an unnecessary dinner invitation by a colleague/ manager as an attempt to sexually harass and some might take it positively as a friendly gesture. The literature here is merely comprised of sexual harassment theories, how it happens at workplaces, individual and organizational characteristics related to it. Also, we have tried to find out as to how much sexual harassment is affecting the

workplace setting, job satisfaction and overall performance of individuals. As much as sexual harassment is increasing day by day at workplaces, in institutions and even in government sectors, it is taken less leniently as ever. After the ground breaking theory presented by MacKinnon (1979), the literature of sexual harassment is following a rather similar track. Sociologists are now broadly linking sexual harassment with workplace inequalities or gender inequalities and other kinds of discriminations related to workplace (Lopez, Hodson, & Roscigno, 2009). Theories have demonstrated that supervisors or personals at work who possess more power at workplace are known to carry more dominance in sexual harassment than the subordinates. But even after decades of searching and studying (Gutek, 1985; Hendrix, William H., Justin D. Rueb, and Robert P. Steel. 1998; Tong, 1984), whether and how workplace power is impacting harassment, the reasons are still unknown.

Telephone is also playing an important role in this issue. Sexual harassment is done by phone especially to those who work in call centers or receptions. One of the studies done by German companies found that it was men actually who were harassing women and even 10% reported the threats to sexual violence also. It was a very stressful experience for women who received these calls, they described their feelings as 'disgusted and disrespected' (Sczesny & Stahlberg, 2000). Another German study revealed that out of 49 women, 50% of women and out of 51 men, 2% were sexually harassed over the telephones (Sczesny, 1997). Similarly, harassment by means of internet is also getting popular. Women are using more internet than men (Le Claire, 2005). The percentage of women becoming the victims of online harassing has also increased. With the increase in the usage of net, number of inappropriate emails has also increased a lot (Khoo & Senn, 2004). People who cannot harass or threaten people face-to-face are now using more threatening and abusive language over the emails.

Sexual harassment is known to occur more likely in organizations with certain characteristics (Pryor, J. B., Giedd, J. L., Williams & K. B., 1995). Pryor, J. B., LaVite, C. & Stoller, L. (1993) suggested that if the surroundings help the situation to occur, it automatically occurs, for example, if a person is responsible for sexual threatening one time, he will do it again if the system allows him to do so. According to Gutek & Barbara A., (1985) sexual harassment is more likely to happen in organizations where all kinds of sexual harassments are common and it actually supports such acts. Sexual harassment appears to be more common (1) In jobs or occupations where males are dominant over the females (European Commission, 1999) and (2) The fear of losing the job upon filing the complaint (Björkqvist, K., Österman, K. & Hjelt-Bäck, M., 1994).

Form the observations, it is noticed that the experience of sexual harassment deeply affects an employee's psychological and physical well-being (Earnshaw & Davidson, 1994). There are quite adverse effects of sexual harassment like in some cases; it might lead to illness, lack of commitment and performance at job, increased absenteeism and even sometimes resignation (Chartered Institute of Personnel and Development, 2005) while Sczesny and Stahlberg's study (2000) of call centers found that job satisfaction and job performance are extremely affected by telephone based sexual harassment. One of the studies in finding the effects of sexual harassment has shown that men and women both feel humiliated, loss of self-confidence, depressed, low self-esteem and decreased jobs satisfaction (Gutek, Barbara A. 1985). A Population Council study of four Kolkata hospitals ("Sexual Harassment in the Workplace: Experiences of women in the Health Sector," by Paromita Chaudhri, undertaken as part of the Health and Population Innovation Fellowship (HPIF) 2006.) showed that 77 respondents reported experiencing sexual harassment, 29 of these reported multiple experiences – psychological (45), verbal (41), touch (27), sexual gestures/exhibitionism (16). The perpetrators were: doctors (41), patients and their families (42), senior nonmedical (24) and administrative staff (15) and others (11). Older doctors reported verbal harassment by senior doctors and consultants at times leading to their discontinuing their studies. Younger doctors said patients and their families abused them over perceived negligence. Nurses reported subtle and indirect

harassment from doctors and those in positions of authority. An intern dentist said that a senior doctor 'in his 70s...' called her on the pretence of showing 'good books' which turned out to be pornography. A nurse reported that a senior consultant would call and say 'A private room is empty, why don't you come along?'

Power imbalances characterised the experiences of sexual harassment – doctors and administrators harassed other doctors, nurses, non-medical staff. Nurses experienced doubled edged harassment, from doctors as well as from patients and families. Private Nurses were the most vulnerable because they were non permanent staff. Few sought redress – only 27 out of the 77 made formal complaints. When doctors were perpetrators there was less likelihood of reporting than if the perpetrator was any of the other. Out of the 27 cases reported, action was taken only in 10 cases, not in a single case against a doctor. The action taken was in most cases non confrontational, non systemic. Action was taken against a harasser if he was in a junior position to the woman who made the complaint – there was an example given of a complaint by a doctor about sexually explicit message in the women's toilet and the person punished was the cleaning staff! When the harasser was a senior doctor or a consultant, the management protected their interests – the example was of forcing the young woman who complained to resign.

Factors underlying non action by the 50 women out of the 77 who did not complain were related to attitudes as they would be blamed for provoking the incident, fear of loss of reputation, a feeling that sexual harassment is 'normal', 'harmless', an 'occupational hazard'; Power dynamics – fear of dismissal, loss of wages, blocking of promotion, victimisation in terms of undesirable duty hours, duty location; Lack of awareness of and confidence in complaint mechanisms - fear of confidentiality being compromised. Another study in the health sector, "Sexual Harassment at Workplaces: Lessons from a Web based Survey" conducted by Mala Ramanathan et al, reported that they received 13 web based responses (actually they received 24 responses but 11 were frivolous/false/fabricated). The profile of the woman who is harassed is: young, relatively powerless women, PG students, field workers, contract employees. The types of harassment that they reported ranged from physical contact, to sexually coloured remarks, demand for sexual favours, and display of pornographic material. Most of the perpetrators were men in supervisory or senior positions, very few were co workers. About redress, the study reported that four of the 13 harassed said that either there were no institutional mechanisms for redress or they did not have any knowledge of these. Eight out of the 13 reported and resolved the problem – those who did complain did so after a prolonged period of self doubt. Complaints registered collectively rather than individually had a better chance of redress – for example, a professor was asked to resign after a group of PG students complained about sexual harassment by him. This study also brought out that redress was swift if the abuser was relatively powerless.

Oxfam India conducted an opinion poll on Sexual Harassment at Workplaces in India in 2011-12. Sixty six out of 400 respondents reported 121 incidents of harassment, 102 out of the 121 were non physical and 19 were physical. The three top categories of workers who felt most unsafe were: labourers (29%), domestic help (23%), those in small scale manufacturing (16%). Majority of the respondents felt that women in the unorganised sector were most vulnerable to sexual harassment. 26% respondents reported to be the sole earning members in their families and said that economic vulnerability made them vulnerable to harassment at workplace. The reasons that women gave for not taking action were – fear of losing their jobs, absence of complaint mechanisms, fear of getting stigmatised, not being ware of redress mechanisms. Respondents (80%) felt the need for separate law for dealing with sexual harassment at workplace.

## **IMPACT OF SEXUAL HARASSMENT**

Since Mackinnon's (1979) Sexual Harassment of Working Women, social scientists have conceptualized sexual harassment as a stressor detrimental to one's mental and physical health (Fitzgerald, Hulin, and Drasgow 1994). Harassment is associated with increased risk of anxiety, depression, and posttraumatic stress disorder as well as diminished self-esteem, self confidence, and psychological well-being (for reviews, see Pryor and Fitzgerald 2003; Welsh 1999; Willness, Steel, and Lee 2007). Despite this evidence, questions remain regarding the association between sexual harassment and depressive symptoms across the early life course, for men and women. Providing actual costs of bad behaviors at work is a difficult task because there are so many dynamics involved, and each case is so vastly different and dependent upon such factors as the size of the organization, how the issue is handled, and organizational culture. Nonetheless, because we are workplace bullying experts we are able to provide some of the estimates made by others in our field:

- ✧ Pioneering researcher Heinz Leymann estimated in his article, published in *Violence and Victims* in 1990, that a bully can cost a single business up to \$100,000 per year per target in sick leave, reduction in work product, and time spent by management to intervene.
- ✧ Michael H. Harrison of Harrison Psychological Associates cited a study in the *Orlando Business Journal* that surveyed 9,000 federal employees. Of those surveyed, 57% reported they had been bullied over a two-year period, and the study estimated that these bullies had collectively cost their organizations more than \$180 million (Farrell, 2002).
- ✧ The Corporate Levers Survey, a survey conducted by the Level Playing Field Institute (2007), a non-profit organization focused on innovative approaches to fairness in the workplace, estimated that the cost of unfairness to American businesses—including bullying (i.e., public humiliation)—is more than \$64 billion annually.
- ✧ The American Psychological Association estimated that bullying and other types of abusive behaviors cost businesses \$300 billion annually in lost productivity, absenteeism and turnover, as well as in increased medical costs (Clay, 2010).

The following impact of sexual harassment in work place may be observed on women employees:

- ✧ Fear and discomfort of having ones personal life help up for public scrutiny
- ✧ Fear of retaliation from harasser
- ✧ Stress on peer relationship
- ✧ Loss of interest in job
- ✧ Being subject of humiliation and gossips
- ✧ Character defamation
- ✧ Becoming publicly sexualised
- ✧ Loss of job/career.
- ✧ Anxiety, frustration, headache, depression, sleeplessness, anger etc.
- ✧ Feeling powerless, helpless and out of control
- ✧ Loss of confidence and self esteem
- ✧ Social withdrawal and isolation
- ✧ Suicidal thoughts and attempts
- ✧ Increased absenteeism to avoid harassment
- ✧ Illness from stress and trauma
- ✧ Course drop out or change in academic plans

## EVOLUTION OF POLICY INTERVENTION

Sexual Harassment at the Workplace has remained one of the central concerns of the women's movement in India since the early 1980s (Patel, 2002). During the 1980s, militant action by the Forum Against Oppression of Women (Mumbai) against the sexual harassment of nurses in public

and private hospitals by patients and their male relatives, ward-boys and other hospital staff; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; of PhD students by their guides and so on and so forth received a lukewarm response from the trade unions and adverse publicity in the media (FAOW, 1991). But this trivialisation did not deter the women's rights activists. More and more working women started taking systematic action against sexual harassment. *Baailancho Saad* ('Women's Voice') in Goa mobilised public opinion against the chief minister, who allegedly harassed his secretary, through demonstrations, rallies and sit-ins till the minister was forced to resign. In 1990, the same organisation filed a public interest litigation to bring amendments in the antiquated rape law that defined rape in the narrowest sense of 'penile penetration into the vagina'. Several women's groups came forward in support of a new concern about a variety of sexually violent acts against women, including sexual harassment (Chorine *et al*, 1999). During the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme. The feudal patriarchs who were enraged by her 'guts' decided to teach her a lesson and raped her repeatedly (Samhita, 2001). After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- "educated and upper caste affluent men" -- were allowed to go free. This enraged a women's rights group called Vishakha that filed public interest litigation in the Supreme Court of India (*Combat Law*, 2003).

A social worker in Rajasthan Government's Women's Development programmer faced repeated sexual harassment in 1997 for trying to prevent a child marriage in an upper caste household. Bhawaridevi became a rape victim while discharging her official duty. Thus it was sexual harassment at the workplace. The law here was helpless as there was no legal provision for punishment. Several Women's organizations joined hands together to file Public Interest Litigation against Rajasthan Government in the Supreme Court. This case is known as "Vishakha and others VS State of Rajasthan". The case focuses on the nature of sexual harassment, its type, extent, reactions and its effects on working women. It also included questions on legal awareness, grievance redress cell and training in self-defence. Sexual harassment has been recognized as the most intimidating, degrading and violating form of violence against women. Within the workplace, it creates a hostile work environment and reinforces the perception of subjugation and suppression of women by men in all areas of their lives. In the context of the workplace, the rejection of attempts at sexual harassment may affect a decision concerning the employment status, conditions of work, compensation and other terms and conditions of employment. Sexual harassment is considered as a violation of human rights as it is a form of sex discrimination. Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. The problem of sexual harassment was addressed in *Vishaka & Others v/s State of Rajasthan & others*, where a writ petition was filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution. The petition had been brought by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation. In *Vishaka* case judgment, the apex court had said, "Each incident of sexual harassment of working women results in violation of fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'....One of the logical consequences of such incident is also the violation of the victim's fundamental rights under Article 19(1) (g) to practice any profession or to carry on any occupation, trade or business." This was reaffirmed in another Supreme Court Judgment in *Apparel Export Promotion Council v/s Chopra*, which stated that sexually harassing behaviour "needs to be eliminated as there is no compromise on such violations". The Supreme Court further reiterated that sexual harassment "is a violation of the fundamental right to gender equality and the right to life and

liberty". The Supreme Court Guidelines on Sexual Harassment, 13 August 1997 has defined sexual harassment as "unwelcome sexually determined behaviour such as: physical contact; a demand or request for sexual favours; sexually coloured remarks; showing pornography and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

### VISHAKA GUIDELINES

- ✧ Setting a precedent for direct application of international law (the Convention on the Elimination of All forms of Discrimination against Women) within the domestic reality
- ✧ Defining unwelcome sexual harassment in compliance with contemporary International law
- ✧ A landmark recognition that all forms of sexual harassment amount to a violation of women's constitutional rights to equality and dignity at the workplace
- ✧ Shifting the onus of responsibility from individuals to Institutions (i.e. all workplaces) to prevent and redress workplace sexual harassment
- ✧ Prioritising prevention
- ✧ Mandating a unique complaints mechanism – 50% women, a woman chair and external 3rd party expert
- ✧ Non- intimidation of witnesses and complainants
- ✧ Upholding confidentiality in the complaint process

### COMPLAINTS MECHANISM

- ✧ All workplaces should have an appropriate complaints mechanism with a complaints committee, special counsellor or other support services.
- ✧ A woman must head the complaints committee and no less than half its members should be women.
- ✧ The committee should include an NGO/individual familiar with the issue of sexual harassment.
- ✧ The complaints procedure must be time-bound.
- ✧ Confidentiality must be maintained.
- ✧ Complainants/witnesses should not experience victimisation/discrimination during the process.

### PREVENTIVE STEPS

- ✧ Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc.
- ✧ Guidelines should be prominently displayed to create awareness about the rights of female employees.
- ✧ The employer should assist persons affected in cases of sexual harassment by outsiders.
- ✧ Central and state governments must adopt measures, including legislation, to ensure that private employers also observe the guidelines.
- ✧ Names and contact numbers of members of the complaints committee must be prominently displayed.

### EMPLOYERS' RESPONSIBILITIES

- ✧ Recognise sexual harassment as a serious offence.
- ✧ Recognise the responsibility of the company/ factory/workplace to prevent and deal with sexual harassment at the workplace.
- ✧ Recognise the liability of the company, etc, for sexual harassment by the employees or management. Employers are not necessarily insulated from that liability because they were not aware of sexual harassment by staff.
- ✧ Formulate an anti-sexual harassment policy.

Pursuant to the Vishaka Guidelines, the Government of India requested the National Commission for Women (NCW) to draft the Sexual Harassment at the Workplace (Prevention and Redressal) Bill. In 2001 there was a writ petition by the Supreme Court based on the Medha Kotwal Lele & Others vs. Union of India & Other Medha Kotwal . The Bill was introduced in the Lok Sabha on December 7, 2010. On 23rd April 2013 the President of India gave his assent to the bill thereby making it an Act.

### PREVENTION OF SEXUAL HARASSMENT ACT, 2013

#### Key Elements:

- ✦ Framed under the overall Constitutional Equality and Right to Life guarantees along with CEDAW (Convention on the Elimination of All Forms of Discrimination against Women).
- ✦ It not only defines sexual harassment at the work place but also creates a mechanism for redressal of complaints. The definition of “aggrieved woman”, who will get protection under the Act covers all women, irrespective of their age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and/or domestic workers.
- ✦ It mandates employer’s to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. On the other hand, the District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level .
- ✦ On a complaint, the Committee is required to complete the inquiry within a time period of 90 days.
- ✦ The Act also prescribes penalties for employers who violate the provisions of the Act. Non-compliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Also, repeated violations may lead to higher penalties to the extent of cancellation of licence or registration to conduct business.
- ✦ Prioritising Redress over Prevention.
- ✦ It Adopts an adversarial system it grants the Internal Complaints Committee selective powers of a civil court .The Complaints Committees is vested with the powers of civil courts for gathering evidence and can also initiate a conciliation proceeding if requested by the complainant.
- ✦ It has processes which run contrary to the prohibition of intimidation of witnesses or complainants.
- ✦ Compliance by all workplaces.
- ✦ An elementary form of monitoring.
- ✦ With respect to a complaint redressal, confidentiality applies only to communication/publication or making information known to public, press and media.

#### Definition of Workplace:

- ✦ Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit in the public sector; either established/owned, controlled or wholly or partly financed by funds received directly or indirectly by the government or local authority or a government company or corporation or a co-operative society.
- ✦ Any private sector organisation or a private venture; undertaking, enterprise, institution, establishment, society, trust, non –governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or services.
- ✦ Hospitals or nursing homes. • Any sports institutes, stadium, sports complex or competition or games venue, even the residence if used for training, sports or other related activities.
- ✦ Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
- ✦ A dwelling place or house.
- ✦ Workplace of unorganized sector.

### Preventing Sexual Harassment:

- ✦ The duties of an employer and/or the appropriate Government towards the prevention of sexual harassment in the workplace have been explicitly laid down in the Acts as follows:
- ✦ Provide a safe working environment at the workplace which shall include safety from third party (outsiders) coming into the contact at the workplace
- ✦ Display penal consequences of sexual harassment
- ✦ Display information about the grievance handling mechanisms including about the Internal Complaint Committee/ Local Complaints Committee.
- ✦ Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provision of the Act.
- ✦ Organize orientation programmes for the members of the Internal Committee.
- ✦ Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

Violence against women is a cause of concern for policy makers and administrators. Sexual harassment at work place is increasing in spite of enforcement of laws and legal provisions. Sexual harassment of women employees in organized and unorganized sector has to be addressed effectively in order to ensure gender inclusive development and creating violence free society and work place. Supreme Court has also observed that gender equality includes protection from sexual harassment. Sexual harassment of women at work place is a gross violation of human rights and dignity. India has vast network of legal provisions for prevention, prohibition and protection of women from different kinds of violence. However, sexual harassment has increased gradually in the work place with the increase in urbanization, industrialization and women employment in organized and unorganized sector. It has been observed that a large number of cases of sexual harassment are not reported due to prevailing socio-cultural values and fear of loss of job. Moreover, sexual harassment has been reported high in unorganized and private sector and least in organized and public sector. Organizations which have enforced gender policy and provisions of prevention and protection of women from sexual harassment in their offices have less number of cases of sexual harassment of women employees. Thus, it is imperative to ensure effective enforcement of Prevention of Sexual Harassment Act, 2013 and Vishakha Guidelines in the work place.

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