



CRITICAL ANALYSES OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT 2013

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ABSTRACT

There are so many crimes against women which are continuously increasing. There is requirement to take serious steps to stop such crimes so that the women can live with peace and they are able to get freedom from such crimes. Women are very important in the society in modern society every woman has her own job and duty but then also the men is the “stronger gender”. The role of the women has been overseen in the society in the last few decades. But in the early days the women were seen in the role of wives and who were limited to cooking and cleaning and take caring of the kids. But the women who have achieved great stature in the industry, sports, government and the media have become familiar sight. I am criticising The Sexual Harassment Of Women At Workplace Act 2013. According to me there are so many things that can be improved in this act. There are so many points that are not covered in this act. Now also we see so many cases of sexual harassment this shows that this act has not been implied properly because if this act has been implied properly then the case of sexual harassment of women at workplace has been decreased. This act has been come from the statement given by the supreme court of India in 1997 on Vishaka And Others V/S The State Of Rajasthan ¹Case. So according to me

there will be no use of making any act and section till they are not properly implied. Section 354(a)², 354(b)³, 354(c)⁴, 354(d)⁵ are available but they are not implied properly. These sections and acts should be applied in such a way that the cases of sexual harassment can decreased and we are able to form an country in which everyone can move freely at anytime even at night.

INTRODUCTION

In this research paper I am going to criticise The Sexual Harassment Of Women at Workplace Act 2013. The sexual harassment is not only forcefully came physical with anyone but if anyone is standing on road and making comments on any girl or women then this will come in sexual harassment even if anyone is staring any women and if anyone is following any girl or women then it will also come in sexual harassment. This act has been come due to a statement given by the supreme court of India in 1997 due to a case suit by Vishaka. According to me this act has not been implied properly because now also we see so many cases of sexual harassment this act has be implied properly so that the no. of cases can decrease. I have taken many cases to show that this has not been implied properly.

SEXUAL HARESSMENT

SEXUAL HARESSMENT – it is unlawful to harass a person because of that person’s sex. Harassment can include “sexual harassment or unwelcome sexual advances, requests for sexual favours and other verbal

¹ Vishaka And Others V The State Of Rajasthan, (1997) 6 S.C.C. 241 (India).

² Sec 354(A) - Sexual Harassment And Punishment For Sexual Harassment.

³ Sec 354(B) - Assault Or Use Of Criminal Force To Women With Intent To Disrobe.

⁴ Sec 354(C) - Voyeurism.

⁵ Sec 354(D) - Stalking.



or physical harassment of a sexual nature”⁶. Sexual harassment do not involve only doing physical harassment with the victim. If anyone done or make any comments on anyone then also it would be treated as sexual harassment. The sexual harassment can be done in many ways. If any women is going or walking on road and then anyone make any comments on that women or girl then it would be treated as sexual harassment. The sexual harassment can be done with anyone at any time. As the sexual harassment is conducted by their family members that’s why they don’t take any step against the person who sexually harassed her due to many reasons. As we can see in many cases where sexual harassment is done by the family members and the female victim does not take any step against him. she don’t went to any police station or even she don’t went to advocate to file against the person who has done wrong with her or we can say the person who sexually harassed her. There are so many reasons due to which she is not able to file any case against the person who harassed her because they fell that if they will take any step against the person who sexually harassed them then the reputation of her family will decreased. Even if victim want to file the case against the person who had committed wrong with her then there family don’t support them. There family members stop them to went to police station or to take any steps against the person who harassed her. They do all the settlements by themselves. they even not tell anyone that anything wrong has been done with their daughter or any other female member of their family and if she tell that something wrong has done with her then everyone blame her everyone behave with

her in such a way wrong has not been committed with her but as she has done something wrong with anyone else. when anyone follow any girl or women then it will come in sexual harassment or even when anyone stare any girl or women then also it will come in sexual harassment activity and if anyone do so then she will be punished for his conduct or we can say he will be punished for his wrongful conduct or misbehave. As the cases of sexual harassment are increasing the suicide cases are also increasing because many times victim is not able to handle herself and they committed suicide. Even in many cases the victim are killed by the criminals so that if any victim want to take any step against the person who committed wrong with her she is not able to do because they know that if they will leave the victim alive then she will take step to achieve justice and for justice they will go to court and if they will able to prove that the person against whom she has filed case has committed wrong with her then they will get punishment for their conduct or work. So that’s why many criminals murdered the victim so that they can avoid the punishment or can save themselves from punishment. As sexual harassment is increasing day by day there are so many laws which are made by the court so that there can be decrease in the number of sexual harassment of women cases .As sexual harassment increasing that’s why so many amendment are made by the Supreme Court .The increase percentage of cases shows that the sexual harassment is increasing day by day and even there are so women and girls those who don’t file case when sexual harassment is done with them they just ignore and move on. the supreme court think that the

⁶SUKANTA SARKAR, VOILATION OF WOMEN RIGHTS pg.113 (1st ed. 2015).



women don't want to disclose their identity that's why they don't go to police station for doing complain so now supreme court / government provide the facility by which a women can complain against the man who sexually harassed her. So many women don't file case due to the fear of loss of reputation but according to me every women should file case whenever she sexually harassed by any one even if she is sexually harassed by any of her family member. She should take full use of her rights which have been provided by the court to her. When we all come together and take step against the sexual harassment then only we can fight with this issue and the cases of sexual harassment can decreased because as we all know the big changes can only bring when we start from small things because small changes are the cause of big changes. No one fight with this issue alone we all have to come together to fight with this issue. If everyone will think that this is his or her responsibility to remove sexual harassment from the country then only a big change can bring in the country. The women or anyone with whom the sexual harassment has taken place they don't take any action against the criminals even when the government provide so many services mean facilities. We should be aware of our rights and use them where require. As a member of the society we all should support them so that they can come in front and can fight for justice. The justice can only be given when anybody asked for justice. First the victim has to come in front of everyone and tell to everyone that what wrong has been done with her then only the court will came to know that what wrong has been done with the victim and what relief can be provided to the victim according to the

injury cause to her. The court and the government can't do anything until the victim come in front and tell that what wrong has been done with her by whom. The goal to form such a country in which every women or girl can move freely anywhere at any time can only achieve when we all will come together and fight against this issue. When sexual harassment has been done with anyone then it not only affect her physically but it also effect the victim mentally and emotionally. Emotional effects can be anger, humiliation, fear, guilty, shame, violation, powerless and loss of control. So Victim takes so much time to overcome from the effects of sexual harassment so the time should be extent more for complaining. Every day we see so many cases of sexual harassment of women at workplace as more and more cases of sexual harassment are increasing at workplace with women that's why government done many things but they don't work properly and to stop all these the act has been passed by the court of India. By seeing the no. of increase in cases "The Sexual Harassment Of Women At Workplace Act 2013" has been passed. This act has been come from the statement given by the Supreme Court on "Vishaka And Others V/S The State Of Rajasthan"⁷ "in 1997.

VISHAKA AND OTHERS V/S THE STATE OF RAJASTHAN⁸

In Vishaka and others v/s the state of Rajasthan the Bhanwari Devi was a social worker in a village of Rajasthan. She works under a social development program in rural places. This social development program work to stop the child marriage in the village and the Rajasthan state government

⁷ Vishaka and Other V The State of Rajastan, (1997) 6 S.C.C. 241 (India).

⁸ Id. at 5.



administrate their program. Bhanwari Devi got information from anyone that the child marriage is going to conduct in a village. After receiving this information she immediately went to that village to stop that marriage. When she reached there than she saw that Mr. Ramkaran Gujja (Thakurs) is doing her daughter's marriage and her daughter is one year old. By seeing all this Bhanwari Devi start stopping the marriage as it was a child marriage and her work is to stop the child marriage means she was doing her job. The Bhanwari Devi make many steps to stop the marriage of that one year old girl but even due to her so many steps she was not able to stop that marriage because that marriage was conducting from her father's concern and when she try to stop that marriage then the persons standing there they stop her from doing so. After marriage has been completed then on September 1992 the Ramkaran Gujjar raped Bhanwari Devi with his Five friends in the front of her husband and they all together hit her husband very badly due to which her husband has got many injuries means she was gang raped by Ramkaran Gujjar including his five friends with an intention to take revenge from Bhanwari Devi as she has try so much to stop Ramkaran Gujjar daughter's marriage who was only one year old girl. After this the male doctor at normal primary health hospital has done her survey at Jaipur. The doctor confirmed only her age and without any recommendation of her raped in the medical report. Whole of the midnight she was continuously taunted by the women constable at the police station. In the past midnight the policeman ask her to leave her cloths in the police station as evidence and then she can go back to her village. After this she left only with her husband dhoti to cover her body and due to which Bhanwari Devi and her husband

had to spend their whole night in the police station. After all this the trial court not find the Ramkaran Gujjar and his five friends guilty and that's why trial court discharge them all. After this Vishaka who was eyewitness of this incident she filed petitioner on Bhanwari Devi behalf. By focussing on all the things and facts or we can say after focussing on whole matter the high court in his judgement mention that "It Was A Case Of Gang Raped Which Was Conducted Out Of Revengefull Situation " after this the supreme court pass an landmark judgement in 1997. The witness of this case was Vishaka who file a petitioner for this. The judgement of Vishaka and others v/s the state of Rajasthan was given by Chief Justice J.S Verma who was a representative of Justice Sujata Manihar and Justice Kripal. According to me any of this conducted directly violate the right to live with dignity and right to life of women. There should be equality maintain between the gender at the workplace and the sexual harassment should be avoided. The Supreme Court after this case established that the in charge person of a particular institution, organisation or office whether it is public or private, will be fully responsible to take effective steps to prevent the sexual harassment activities. The accused person will be charged penalties for his conduct. This had become a very crucial topic on which an act should be made so that woman can feel themselves safe where they work. In the case of the private companies strict rules should be made regarding the punishment for sexual harassment to prevent the female employees from sexual harassment activities and the strict actions should be taken by the person in charge of that institution or organisation if the sexual harassment is conducted by an outsider or any other employee of the same institution or



organisation. Bhanwari Devi was ganged raped in 1992 and the supreme court had given the statement or we can say the supreme court had given the judgement in 1997 then on the bases of judgement given by the supreme court an act has been passed in 2013 for the protection of women at workplace this act is known as “the sexual harassment of women at workplace act 2013”. This act has been came in force on 9 December 2013 by the ministry of women and child development the India’s first specific legislation that rendered to this issue. The aim of the act is to prevent and protect the women from the sexual harassment activities at workplace.

THE ACT HAS BEEN MADE BUT IS IT PROPERLY IMPLIED?

The act has been made but this has not been implied properly⁹. This act has been came on 2013 for the protection of women from sexual harassment at workplace but after coming of this act in 2013 there are so many cases in which the sexual harassment has been committed with a women employee at workplace. The cases get doubled between 2014 and 2015. According to national crime records bureau data 2015 the cases has been increase from 57 to 119. The cases has rise by 51 % at workplace. The total number of case which has been take place in 2014 are 469 and cases which take place in 2015 are 714 so by seeing this data we can say that the sexual harassment cases with women at workplace has been increased by 245 case. This all show that this act has been made but this act has not been implied properly because if this act has been implied properly then the number of cases of sexual harassment with the female at

workplace has been decreased from 2013 to 2019 but in this data we see that the situation is totally opposite that the cases has been increased from 2013 to 2019. There are some of the cases of sexual harassment take place which are enough to prove that this act has not been properly implied.

SHANTA KUMAR V/S COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ORS¹⁰

The full name of this case is Shanta Kumar V/S Council Of Scientific And Industrial Research And Ors Delhi High Court 2017 On 29 April 2005. In this case the petitioner made complain regarding the incident with her. She said that she has been sexually harassed by the respondent. She said that when she was working in the laboratory the respondent came in the laboratory and then he stopped the machines because the machine were on as work was going on after this he snatched the samples from the petitioner hand which she was holding after this the respondent throw the material which she was holding. After this respondent pushed the petitioner and threw her out from the laboratory and then respondent locked the laboratory. After this the petitioner said that respondent start shouting on the petitioner and then she start using derogatory language for the schedule casts communities because petitioner was married to a person who was a member of scheduled castes communities. After this the petitioner said that when she had made complain to the higher authority then higher authority has not taken any step against the respondent means no step has been taken by the higher authority on the complain made by the petitioner. After this

⁹ Sexual harassment of women at workplace act, 2013.

¹⁰ Shanta Kumar V Council Of Scientific And Industrial Research And Ors, MANU 2017 D.E. 3392.



the petitioner also said that the respondent was very harsh in his behaviour when he was talking with the petitioner and even the respondent told the petitioner not to enter in the laboratory again. The petitioner also said that the respondent also abuse the petitioner. The petitioner tell all the things or whole incident to the higher authority but then also no action has been taken by the higher authority against the respondent and the higher authority has told her to complete the formalities related to the equipments. When this all questions arises then the workers or employees working in the premises said that the respondent is low tempered and at small thing he got angry but this don't mean that he had sexually harassed the petitioner even the employee or the workers working there they said that there is nothing such happen in the premises. They said that there is no fault of the respondent. The petitioner was not having any of the evidence to prove that sexual harassment has been done with her by the respondent and so she is not able to prove the claim which she has made on the respondent. On 31 Oct 2017 this case was dismissed and no action has been taken against the respondent as petitioner was not having any evidence to prove that the sexual harassment has been committed with her by the petitioner and so she was not able to prove the claim.

VIDYA AKHAVE V/S UNION OF INDIA, DEPARTMENT OF WOMEN AND CHILDREN AND ORS¹¹

The petitioner was an employment in a bank name Indian Government Owned Development Bank. She filed a complaint against the general manager of the bank that she has been sexually harassed by the general

manager of the bank. The general manager of the bank was also the immediate superior officer means he was also the supervisor of that office. She said that when she filed a case then also no action has taken for this crime. When no action has been taken by the employer then petitioner file another complain for the sexual harassment with her. As the law lay down by the supreme court of India in the case of "Vishaka And Others V/S The State Of Rajasthan¹²" that the employee filed complaining seeking establishment of an ICC as was necessary to be set up. The petitioner said that the sexual harassment done with her by the general manager took place before Feb / Mar in 2012. The petitioner filed complaint of sexual harassment after the expiry of three months. As the three months has been prescribed as the limitation period under the sexual harassment act and that's why when she complain the about the sexual harassment after the expiry of three months than this is not taken into account by ICC. However when no action has been taken by the ICC then the human resource department had taken separate action based on the facts told by the petitioner which are beyond the scope of sexual harassment act but based on the ICC report the disciplinary authority had passed an order in the favour of the petitioner that the general manager who had sexually harassed her has been transfer to some another city and even he demoted to the lower rank by the two ranks and even her received a pay cut as per his lower rank means before this his salary was much more than now because he was on higher rank and now as a punishment his salary has been cut off and he is now on lower rank. But the petitioner was not happy with

¹¹Vidya Akhave V Union Of India, Department Of Women And Children And Ors, MANU 2016 MH 2037.

¹² supra note 1, at 2.



this decision she said that more punishment should be imposed on general manager for her bad deed. She said that this is not enough as a punishment for the respondent according to his crime or behaviour means the punishment to the respondent should be given according to his crime. The validity of the observation of the ICC was challenged by the employee as she said that the evidences are not taken on records after this the general manager was not held guilty as the petitioner has filed the case after the expiry of three months and no action has been taken. After listening the decision the petition was not happy so she argue that the general manager was on higher post then her and due to which she has a fear that if she will go against him or if she will complain against the general manager / supervisor than she may lose her job and that's why she was not able to complain against the general manager before the expiry of three months and she also told that she was also having fear that if she will complain then she may not get the job in her future. But at this the supervisor argue that the penalty or punishment given to the supervisor is more than enough as he had suffered psychologically and financially as now he is at lower position and even due to his act his salary has also cut off. Due to which he has also suffered by the financial problem. It was also contended that the general manager or the supervisor also living apart from his family members as he has been shifted or we can say he has been transferred to any other city. After this it was said that the court will not re-appreciate the evidences as they has already once seen by the disciplinary committee and when disciplinary committee passed the order then court cannot look into the proportionality of the order passed by the disciplinary committee. The court observed that the inquiry done by the disciplinary

authority and said that the interference will be warranted only when there is wednesbury principle, non-compliance of the principle of administrative law and doctrine of proportionality by disciplinary authority. Court said that it would held to be seen whether there is the proper balance between the adverse effects like liberties or interests of person, order may have on the rights, the purpose for which they were intended to serve. The court observed that all the evidences are properly and fairly considered and after that the decision has been taken and so the court cannot give the second opinion because then it will discretion to do so. But the court fell that there is a need to have a effective rules and regulations in the workplaces for reducing the cases of sexual harassment of women. The court also said that the male employees must be aware about the rules and regulations if they will misbehave or misconduct with the female employees are now not only contributing in the national economy but they are also contributing in the international economy. The court also remark that there are rules and regulations which should be made by the companies so that cases can decrease to and to deal with the issues of sexual harassment. The court also said that the ICC should trained to deal with the sexual harassment cases in fair , proper and dispassionate manner and the justice should be based on the natural justice and there is no violation of natural justice.



PROFESSOR ASHISH KUMAR DAS V/S NORTH EASTERN HILL UNIVERSITY ON – 30 AUGUST 2017¹³.

In Professor “Ashish Kumar Das V/S North Eastern Hill University“ the petitioner and the respondent both was the employees of same organisation means the petitioner and the respondent both work at same place. The petitioner was a professor of mathematics in the university and the respondent was another subject professor of that university. The name of the university was “North Eastern Hill University “. The petitioner complain against the respondent .The petitioner complain that the respondent has sexually harassed the petitioner. For this act of the respondent the petitioner file a petition against the respondent. When complaint has been made by the petitioner against the respondent. Then the argent action has been taken by the directors so that the sexual harassment not committed again with the other professors working in the university and the students studying in the university working in the university or we can say the same thing don't happen with the other employees. The respondent has been given the compulsory retirement as the punishment or penalty for committing the sexual harassment activity with an employee of the same organisation. After this in the university in which the respondent and the petitioner was working a research scholar in the department of mathematics made a complaint to the vice chancellor. The research scholar made complaint that the petitioner has sexually harassed her. She told to the vice chancellor that while she was working under the supervisor of any other professor as she supervisor take no interest in her work and

her professor remain busy her other students and that's why she was not able to pay attention on her work or we can say that her professor don't give attention to her work and due to this reason she has to take advice or she has to work under the petitioner or we can due to this she has to work under another professor. The complaint said that due to her work or to take advice she have to go to the petitioner chamber or room. The complaint said that when she went to the petitioner then petitioner show extra attention on her health and figure and even many times the petitioner make comments on her. The complaint also said that when she went to the petitioner the respondent flirt with the complaint. The complaint said that one day the petitioner made her uncomfortable by cheap and unrelated talks and by flirting with the complaint in the room or chamber of the petitioner. After this the petitioner next day also call the complaint in his chamber or room and then the petitioner told the complaint to sit and then the petitioner start touching her and then the petitioner told the complaint to do sex with the petitioner. The complaint said that the petitioner start talking with the complaint on unrelated and useless matters and then the petitioner also include the unwelcome physical contacts. The complaint said that the petitioner also tell her that if she will do whatever the petitioner is telling the complaint to do then the complaint will be able to complete her work. After this the complaint made the allegation on the petitioner that the petitioner also made call on the complaint phone to talk with the complaint and the petitioner talk all rubbish with the complaint on phone and due to which the complaint got disturbed and

¹³ Professor Ashish Kumar Das V North Eastern Hill University, MANU 2017 FENT 0097.



because of this the complaint is not able to focus on her studies or we can say that the complaint got disturbed and due to this the complaint is not able to concentrate on her work. The complaint said that the calls of the petitioner make her uncomfortable means due to the calls of the petitioner the complaint fell uncomfortable as the petitioner sexually harassed the complaint. After this the complaint was handed to over to the women's cell of the respondent university by MR. T. There has been seen that there are so many complains made by many other women in the university against the petitioner. The complaint also said that the suggestion given by the petitioner to the complaint is not good or related to the complaint work. After this the complaint said that after making the calls to the complaint the petitioner came to the complaint hostel and then the petitioner tried to convey the complaint that there is no need to tell about all this matter to anyone even not to her family also the petitioner also tell the complaint that there is nothing wrong what the petitioner done with the complaint. When questions are asked from the petitioner by the vice chancellor then the petitioner told to everyone that the complaint is mentally disturbed means the petitioner said that the complaint is suffering from mental disease and due to her mental disease the complaint is making allegations on the petitioner after listening the whole situation has been observed once again properly then it was found that the petitioner has committed wrong with the complaint and the petitioner is found guilty for committing sexual harassment with the complaint and by observing whole situation it was decided that the petitioner will remain suspended till the

whole matter get solved. After this the decision given by the disciplinary authority was that the petitioner will remain permanent suspended from the university as wrong has been done by the petitioner and he has found guilty for his wrong deed.

THE MANAGEMENT OF CHRISTIAN V/S MR. S.G. DHAMODHARAN ON – 25 SEPTEMBER 2018¹⁴.

In this case the petitioner and the respondent both were working in the same industry. The petitioner filed a complaint against the respondent. The petitioner complain that the respondent had sexually harassed the petitioner. After this the committee to whom the petitioner has complaint said the petitioner to give or provide the evidences related to the claim which she has made on the respondent. By listing all this the petitioner brought all the evidences of sexual harassment and then she given all that evidences to the committee to whom she had done complain against the respondent. By seeing the whole matter it was decided by the committee that an in camera proceedings will be conducted by the committee on this matter and the statements related to the complaint from the relative staff has been taken for the complaint as well as for the respondent. The respondent was a workman in that industry and after this the committee done an meeting and by observing all the available evidences the respondent was held guilty for committing the sexual harassment with the petitioner and then the committee decide to dismiss the workman or the respondent as the punishment to the respondent by the committee. On this the Industrial Tribunal said that the evidences are not have been seen

¹⁴ The Management Of Christian V Mr. S.G. Dhamodharan, MANU 2019 TN 1137.



properly and there is not proper treating of the evidences in this case means the industrial Tribunai said that the evidences has been ruin by anyone and even the industrial Tribunai said that the available evidences are not enough to prove that the sexual harassment has been conducted by the respondent with the petitioner or we can say that the industry Tribunai said that the evidences are less and by the evidences it can't be proof that the sexual harassment has been committed by the respondent or employee with the petitioner. At this on the request of the industrial Tribunai the evidences are checked once again means the evidences are once again has been checked by this time .The supreme court found that the respondent is guilty for sexual harassment and then the supreme court tell that the respondent should be dismiss from the premises. Now the industrial Tribunai has no choice rather than dismissing the respondent from the premises at the decision was given by the supreme court of India so the industrial Tribunai dismissed the respondent.

CONCLUSION

The sexual harassment with the women at workplace take place very frequently and due to which the rate of the sexual harassment has been increasing day by day in India and if strict action has not been taken then it will directly hamper the working ration of the women in the India and due to which the economic situation of India will also get hamper. The government should take strict actions. By making acts and laws against the sexual harassment activities the activities of the sexual harassment will not decreased till they are not properly implied. The rules and regulation should be such that the sexual harassment of the women can decreased by the act and laws made by the court. When

government will make rules and the regulation for the sexual harassment then and if they are properly implied then only we will be able to form a country in which everyone women can live without fear and can walk anywhere and at anytime. For this change we all have to come together and work for this than only the change can be brought because the big change can be brought only when everyone will work against the sexual harassment an individual or a small group of person can't brought a big change. According to me the proper rules and regulation should be made and they should be properly implied to fight against the sexual harassment.

BIBLIOGRAPHY

In this research paper I have taken help from Book – **“VIOLATION OF WOMEN RIGHTS”** which is written by **SUKANTA SARKAR** which was published by **D.P. YADHAV** for **MANGLAM PUBLICATION DELHI -110053 (INDIA)**. The first edition of this book was published in **2015**.

The second book from which I have taken help is **“CRIME AGAINST WOMEN”** which is written by **SUKANTA SARKAR** which was published by **D.P. YADHAV** for **MANGLAM PUBLICATION DELHI-110053 (INDIA)**. The first edition of this book was published in **2014**.

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