



PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (POSH ACT 2013)

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ABSTRACT

Sexual harassment at work place is a demonstration of undermined and deep-seated patriarchy prevailing in the mushroomed society encouraging power based discriminatory practices and in turn creating hostile work environments where women workers are in jeopardy to experience harassment and abuse. Sexual Harassment at the workplace is a dreadful violation of an individual's rights. In India, Employment to population ratio, ages 15-24, female (%) (National estimate). Estimated results show the percentage of Women in parliament - 14.5%, in labour force 27.2% and females over 25 with secondary education 39%. Economic dependence on the job for their livelihood, social perception of obeying the elders or superiors, job insecurity and spilt over patriarchal biases into the environment of work make the women workers more prone to be caught in the spiral of sexual harassment.

However, there is a lack in the measurement of the relationship empirically between the concept of sexual harassment, conditions of the workplace, and the coping behaviours of the sufferer that focusses on the Indian sub-continent specifically. This also violates the fundamental rights of women to equality under Articles 14 and 15 and her right to

life and to live as under physical strain Article 21 of the Constitution and right to practice any profession, where a right to a safe environment free from Sexual Harassment is also included. The law also mandates that organizational mechanisms to deal with sexual harassment, and consequences of sexual harassment on the victim-vocational, psychological, interpersonal and physical strain, the strategies (whether external or internal handling strategies) used by the victim to handle with sexual harassment and develop a training manual based on the findings of the study to help victims properly deal with sexual harassment at workplace should be in place. The method of research adopted by the study research is descriptive and quantitative. Women in India are perceived and conceded security under the Constitution of India. The introduction to the Constitution, bury alia, ensures social, monetary, and political equity, balance of status, opportunity, and the nobility of the person.

India's growth, and its increased efforts to honour the believers of its Constitution, show its commitment to its citizens' fundamental rights. As India advances as a country, remembering for its financial approaches, it is normal for associations and work-spots to remain side by side with the tide of current turn of events and support workplaces driven exclusively by justify and free all types of segregation. The POSH Law, 2013 is one such step to such meritocracy and in time shall yield its benefits for all women who are part of the workforce.

INTRODUCTION



The Sexual Harassment Act, 2013 is an authoritative demonstration in India that is actualized to shield ladies who may face any sort of sexual harassment not only at the workplace but also out of the place if there the lady is in related to her work, or could say if in leu of her work she is present at that very moment. In prior it was passed by Lok Sabha which being the lower house in 2012 on 3rd September and after getting passed by the upper house of the parliament that is the Rajya Sabha on 26th of February in 2013. After this every bill needs final assent to become an act so the bill got its assent from The President of India on 23rd April 2013. The Act became effective after 9 December 2013. This resolution tended to from the Vishaka Guidelines being the root of breaths of the act called Prevention of Sexual Harassment (POSH) presented by the Supreme Court of India. But it got its backdrop when allot of people at manager level disagreed on the guidelines by this act and many amongst them disagreed to this rule, this data was introduced by the international labour organisation. Though it has its own legal requirements but still most Indian employers have not applied the rules of this act which makes it bound upon employer having more than 10 employees. In accordance to the report by international labour organisation of November, 2015 around 37% of total companies in India are denying to accept the rules they need to follow in accordance to the act. This do not include only the Indian companies but the multinational companies in India also count 24% amongst that 37% of companies denying to follow the rules laid down by the act. The Higher authorities of Indian Government has compelled to take severe

action against the people at the top posts of the company who neglect or deny to follow the rules laid down by the act.

OBJECTIVES

- Sexual Harassment at a point is taken into account violation of women's right to equality, life and liberty. It creates an insecure and hostile work atmosphere that discourages women's participation in work, thereby adversely poignant their social and economic authorization and therefore the goal of inclusive growth.
- With a lot of and a lot of women connexion the work force, each in organised and unorganized sectors, guaranteeing AN facultative operating atmosphere for women through legislation is felt imperative by the government. The projected legislation contains provisions to guard each woman from any act of harassment regardless of whether or not such lady is employed or not.
- To befits the directives of Hon'ble Supreme Court of India requiring all employers to develop and implement a policy for bar of sexual harassment at the place of work.
- To evolve a permanent mechanism for the bar and redressal of molestation cases and different acts of gender primarily based violence at the place of work.
- To follow and implement the Act ban all employers to represent an "Internal Complaints Committee" and lay



down tips for redressal of complaint associated with the sexual harassment of women at the place of work.

LITERATURE REVIEW

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|---------------------------|---|--|---|
| <u>PAPER TITLE</u> | India's POSH Act — A Snapshot | Sexual Harassment of Women at Workplace | Evolution of laws and acts on harassment of women at workplace |
| <u>AUTHORS</u> | By Madhu Sivaram Muttathil and Abhijit Gangadhar Poonja | Nikunj Keyal | Shalmoli Bhattacharya |
| <u>YEAR</u> | <u>2018</u> | <u>2015</u> | <u>2016</u> |
| <u>METHOD</u> | Theoretical study | Empirical, quantitative, exploratory cross-sectional study, with questionnaire | Analysis of legal texts and judicial decisions belonging to the |

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| | | re applied to professionals of Primary Health Care. | subject. |
| <u>LIMITATION</u> | Making the Act gender neutral Dealing with complaints beyond the six-month, limitation Compliance and audit the | The act does not include workers of armed forces and the agricultural workers as well. Not only can this but the fine in monetary form be changed by the intern | This law hasn't been yet enforced but if done, then would apply limitations to owners of the company making managers reluctant to hire women |



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| | Government and Handling complaints | al committee. | |
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the mushrooming issue. Now everyone joined their hands to tackle the problem with very effort to take it down, be it employees or employers, government or girls joined to different girl's Non-Governmental Organisations, everyone came together thinking different streams of dealing with the issue and to extinguish it from the society.

BACKGROUND

Before Vishakha, the dialect of lewd behaviour remained indirect, unnoticeable, and insignificant in India. The sexual measurement of pestering was impeding and not talked about. Despite the fact that the Supreme Court Vishakha, rules (1997) started a talk in India on crude behaviour and helped ladies by confirming their right to a sheltered workplace; considers done by associations crosswise over India and media scope throughout the years uncovered that businesses either take no notice of the rules or not consider them important.

Now everybody demanded to extinguish harassment or any such act from the society and get done with any of such backdrop to the society. To achieve this dream, they demanded our legislation as a shield to protect and support them and the government and also the different girl's Non-Governmental Organisations who were now ready with their new ideas and solutions to get the problem solved permanently from the society and make it a better place to live.

PRE VISHAKHA-SCENARIO

Before the commencement of this act if any women faced any act of sexual harassment at workplace, the particular women had to follow the law and upheld a complaint at nearest police station under the sec 354 and 509 of IPC. In this way only the women population could deal with the sexual harassment.

It can be seen by everyone that this problem of harassment could be violent against women not only physically but mentally too. In many treaties by different nations internationally have foreseen the problem and provided women with right to live with no harassment which means to live in a non-harassment environment or free from harassment environment as a right of every women. All the lawful instruments working with this issue have demanded down full proof assurance of life and freedom and these instruments are consumed as a flexibly to prevent and address the issue.

This harassment was a specific issue and still breaths in the community with the same particularity. So, it became very important to deal with such an issue making higher authorities' duty to make it prior to their notifications to deal and determine best possible way to take down

In, our nation until the judgement came in 1997 there was not a single law dealing with problem faced by countless women in our society. Not only had this but before



that no law was existing to support the guidelines come after the Vishakha case. Not only the law but the constitution did supported women but with some grounded laws to life and liberty and constitution allows fight against discrimination and give some freedom to trade or profession and not only this but also to hold any occupation, but these were grounded rules and regulations in relating to the big problems faced by the issue.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

Doing harassment of a women is not a one-time thing but professionals have related this t behaviour of a person. This could be explained as unaccepted behaviour of sexual proceedings leading to harassment. This issue of harassment at place of work is extensive issue all around the globe whether it be a developed nation or any developing nation, not ceding any underdeveloped country as well, this cruel behaviour of harassment is somehow breathing in every community and hence is very common also. One can also treat it as a problem at vast as it is a universal issue having some sort of negative impact on both the genders. However, the females suffer more harassment as compared to men because it is more amongst their community based on gender in particular. It doesn't matter that how many preventions a woman or the society takes to protect themselves or any women from this disgusting problem faced by many but somehow this enormity keeps taking place.

When one sees the vulnerable sections in a society one could see the section of

women at the top and disarmingly this section of women are the main victims. Due this problem only the women may also have to face many other problems because of their gender, and the problems are countless be it, trafficking, sexual abuse, harassment or the evillest crimes in the society i.e. rape, murders etc. it is not lawful to harass a person based on their gender.

This issue can include “sexual harassment” or “universal sexual proposals”, requesting favours that are sexual in nature, or any other kind of physical harassment or taking advantages “of sexual in nature”. This is some kind of behaviour that makes a person feel offended, mortified or terrified, it could be either of these types that are “physical, verbal, written, sign language, signs, showing some irregular or personal parts, etc.”

At times a person may agree on some behaviours and give consent as well for the same for those particular behaviour and hence also take part in some of the behaviours shown by other person even though it is unacceptable at that time also but that same behaviour at that time have the consent so from here one could state that the word unacceptable does not mean involuntary, at times a person might provide consent for the same. It all depends upon the situations and circumstances the person is in at that very point.

DEFINING SEXUAL HARASSMENT AT WORKPLACE



One of the major problems is to understand this concept as it involves a wide scope of behaviours, so much so that sometimes, even the female facing it find it very difficult to explain what they went through. Though, a lot of national and international organisations have tried at their levels to come up with a common definition to define these prohibited behaviours, they have been unable to reap any fruits.

The international organisations define Sexual Harassment as “violence against women and discriminatory treatment” which is a broad definition compared to the national laws. National laws focus primarily on the illegal conduct.

In general sense, sexual harassment can be defined as any verbal or physical conduct which is uninvited and of a sexual nature which leads to development of an offensive and unsafe work environment.

WHO IS A HARASSER AND WHO IS HARASSED?

Most of the time the first thought that comes in mind after listening about the issue is that the harassment would be limited to the interferences between the male at the top level of that place and the female subordinates which might be working under him. This might be a case but not cup of tea to each and every scenario. In fact, harassment could occur between any co-workers or colleagues which might come under any of the under mentioned sub points:

1. Lower level male harassing a female at superior most level
2. Women may also harass men

3. Harassment amongst same gender
4. Women can harass another gender either same or different
5. Men may harass same gender too
6. Harasser could be non-employees that could be customers, suppliers, cleaning staff, supervisor or co-workers

CONDITIONS

The “sexual harassment” includes any one or more of the following unwanted acts or behaviour (whether direct or indirect in nature) namely:

- i. Physical advances and contact
- ii. A request or demand for sexual favours
- iii. Making sexual remarks.
- iv. Showing pornography
- v. Any other unwanted physical, verbal or non-verbal (through gestures or written) conduct of sexual nature

CRIMINAL PROCEEDINGS

Under the Indian Penal Code or be it any other law of India, if any offence takes place it points the employer to take fruitful action for the particular offence in regard to it by registering a complaint to the authority concerned. In the same go the employer must also see that he sufferers or witnesses or any other person who was negatively involved in the offence is not victimized or discriminated against while lodging or on going the procedure of the complaint of being harassed sexually.

Action to maintain discipline

If any misbehaviour by any person results in the harassment of any employer as defined in the respective service rules that misbehaviour would result to disgrace the discipline of the work and the person harassed for the same the employee make



take appropriate steps to maintain disciplines under the sets of rules already mentioned.

Mechanism to lodge a complain

It is not mandatory that the misconduct resulting into harassment is an offence under law or it un allowance of the rules of service one signed before joining, and applicable machinery ought to be made within the employers' organization in regard of addressing the criticism created by the harassed person. Such machinery ought to guarantee time limited or time barred certain redressals to the issue so lodged.

CURRENT LEGAL SCENARIO ON SEXUAL HARASSMENT AGAINST WOMEN

In order to understand the whole law on harassment of women at workplace, it is firstly needed to see the whole procedure that took place in the famous case of Vishakaha guidelines and thoroughly read it step by step and understand the judgment of honourable Supreme Court. As because this was the first time when the introduction to the definition of sexual harassment at work place was given. it was latterly stated as the sexual harassment but later when it was acknowledged by many it was modified to sexual harassment of women at workplace so the term at work place was added later in the definition was set down. So later it was now considered as somebodies rights and elaborated pointers were now added to the same.

Though these guidelines came into force and the court kept on giving notifications

to see through them while giving any judgements, but still until a decade ago nothing was done to follow up the rules and regulations under the guidelines, some still took a step at employee level to make the workplace a better and more friendly towards women to get them more friendly and safe environment and gender even-handed services. But still as earlier mentioned most of the companies whether they were Indian based or a multinational company in India they just denied to follow the steps of rules laid down by the guidelines fitting up committee to foresee upcoming problems and look for ongoing issues and register new complaints as well. It made allot of controversies not alone in the media but in the numerous judgements laid down by different courts as well and after allot of delay a brand new advancement could now be seen in out Indian legislative assembly as it now passed the sexual harassment of women at workplace act, 2013, to produce safeguard for the operating ladies against the problem of harassment at workplace and additional readdress the whole machinery of redressal od criticism during this problem faced by countless number of women.

FINDINGS

In the 21st century where movement like #MeToo are making survivors of sexual harassment in any form, share their stories and stand united against the perpetrators, all over the globe, who belong to strong political, business or entertainment background, the concept of sexual harassment is very much ignored in an economically and socially developing nation like India. Though, a lot of Indian



women stepped forward and took stand against the wrong doers, but in a country like India, this concept still remains as an alien phenomenon where at least 5 women are sexually harassed in one way or the other, every hour.

A lot of statistics, as released by various government organisations, portray a picture that might not be liked by many. However, that is just the tip of the iceberg, where the data is primarily based on cases that have been reported whereas, in a country like India, majority of such incidences go unreported because of various societal reasons. The National Crime Records Bureau (NCRB) in their report published in Jan 2020, stated that Uttar Pradesh tops the chart with almost 6000 complaints a year followed by Madhya Pradesh and Maharashtra, with 3000 and 2900 cases or complaints, respectively. Among the cities, Delhi secures the first position with almost 650 cases, followed by Mumbai with 400 cases and Kanpur, closely following with almost 200 cases a year. Where Bihar, as a state reported the highest number of cases of sexual harassment while travelling through a public transport, the highest number of cases of being sexually harassed at workplace were reported in Telangana.

A lot of faith of the government was in believing that women are safe in shelter homes. However, the recent report by NCRB also highlighted the fact the maximum number of cases reported were in shelter homes of Pune and then Mumbai. An overall 30% increase was observed in the cases being reported. Uttar Pradesh, as a state reported the highest

number of cases of sexual harassment in a shelter home, with the number being as high as 240 followed by Andhra Pradesh and Maharashtra with 64 and 63 cases respectively. A movement called the 'Lek Ladki Abhiyan' that functions in Maharashtra helping women and girls who have been through sexual harassment, reported that only 1% of such harassment cases come out. The reason as stated by the movement states.

that such shelters come under the party workers and they are the hands behind their operation as well. The movement tried to introduce a Standard Operating Procedure but they could avail no positive reply.

Vijaya Rakhtar, the chair of Maharashtra State Commission for Women states that "members of such committees are not aware of this law and are afraid of taking any action against geriatric. This served as a reason for people to come up and file complaints. They also asked the government to make it compulsory for the staff of corporate sector to undergo online training on sexual harassment to make them aware of their rights." She further states that a lot of courage is needed to act upon these cases of sexual harassment, which various internal committees, set up both in government and non-governments sectors, lag.

Since NCRB in their report said that public transports is one the most common place where women can experience sexual harassment, on that view, Delhi consists of the largest public network transports called the Delhi Metro which consists of 348 kilometres of track with over 229



metro stations and 8 lines, but women still are not safe. A 14% rise of molestation cases at workplace was observed in BSE 100 firms. The reports of such cases come with mixed emotions, where it is shameful that such incidences take places, but important to also realise that women are getting more and more aware about this concept and bringing to light the faces who indulge in such hideous acts and reporting these sexual misdeeds. In other words, increased reporting is good to begin with as there is increased awareness.

Reported cases in India rose by 54% between 2014 and 2017. Thus, the trend of an increased number cases being reported has been ongoing for some few years now. But, the gap in reporting remains. Almost 99% of the cases go unrecognised because they are not reported. Police in some regions do not even hesitate to not register a molestation. Also, as a drawback of the MeToo movement, a lot of attention was diverted to the privileged section of the society where as the more needful and weaker section of India had to face worse scenarios to come forward and share their experiences of such encounters and the poor circumstances that they had faced.

In 2014, a report done in Pushkar, Rajasthan stated that in the stories of rural women are not paid attention to or not included as they are not as reachable to authorities.

Also, the discourse of addressing the everyday sufferings of rural women in India is disheartening. There is awareness among big and metro cities, but it's the lack of knowledge and awareness among the rural female population of India that

need more attentions. Because misogyny, hate and deep-rooted patriarchal practices and low levels of education persist here, it requires that these women be aware about their rights and know how they deserve to be treated so that they stop believing that their everyday sufferings are normal.

To rule out the above argument, one can say that what led to demanding the formulation of Vishakha Guidelines was actually a case from rural India where a woman from Rajasthan, namely Bhanwari Devi, who worked with a development program for women who delivered door to door education about social issues affecting women, stood up against the child marriage of a 9 month old girl. Her courage did not really please the higher caste men where she worked and angered the men to not only beat her husband unconscious, but also gang-rape her later. Though, the men were acquitted as clean handed, the case grabbed attention all over the country. A women's rights group called Vishakha, a NGO, filed a PIL against the ruling. The ruling stated that because she was raped in a field and not at her place of work, the men could not be help as culprits, whereas the organisation asserted on the fact, that it was solely because of the work she did, the mis-happening took place. With this argument, that the attack occurred because of her professional role, The Supreme Court ultimately ruled and asserted that it is the duty of the employers to protect female staff from any misconducts of sexual nature. The SC stated, "It shall be the duty of the employer or other responsible persons accountable for the same in work places or other institutions to prevent or deter and forestall the commission of acts



of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of molestation or sexual harassment by taking all steps required for the same.”

The SC, who created these guidelines, broadened their scope and formulated the POSH Act of 2013 which clearly defined what sexual harassment is, what constituted it and

Also established protocol for employers to protect their employees from such deeds and how to address complaints when they arise.

The lawmakers have, however been not appreciated much. The critics say that the aforementioned laws do not deal well with the incidences of sexual harassment at the place of work and their needs to be strictness in its implementation. A lot of other concerns have been raised like “it restricts the rights of ladies, dilutes the group action rights, and reduces the liability of employers.”

“It isn't merely enough to strengthen the law, impose severe punishments or establish internal grievance Committees, what has to be self-addressed is that the larger issue of the inherent gendered power relations of workspaces” was another deeper truth that needed to be addressed as per the EPW.

Labelled as the most unsafe country for women, says Manjunath Gangadhara, “India has shown complete ignorance and misbehaviour for women rape, marital rapes, sexual assault and harassment, female infanticide has gone reduction, the world's fastest growing economy and

leader in space and technology is still in this growing era is shamed for violence committed against women.” Not to mention, but practices like female foeticide and sex-determination are still carried out in India though they are illegal.

The uninvited sexual attention at the place of work against the women employees of India projects a low socio-economic development of the nation at the cost of country's considerable economic growth. Unless, this is not addressed in a proper manner, all economic growth remains meaningless.

CONCLUSION

The POSH Law is an epitome of India's growth. Its great effort to fulfil and honour the principles of its Constitution, to showcase its fidelity to the citizen's fundamental rights. The legislation started with The Vishakha Guidelines from the early 1990s and the law came into effect in 2013. The purpose of this Law is to prevent sexual harassment against women at the workplace and also to protect them against it. As India is developing every day, and is coming up with new policies it is important for all sectors of the economy including work place and organisations to keep up with this development and encourage workplaces free of discrimination.

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