

Sexual Harassment of Women at workplace in India: an Ubiquitous Hazard

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ABSTRACT: Across the globe today, the issue of sexual harassment has become ubiquitous transgressing all limits and borders. Sexual harassment at workplace creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. The Supreme Court of India in the year 1997 in *Vishakha v. State of Rajasthan*, acknowledged the gravity of sexual harassment of the working women at workplace and laid down guidelines, thus making it mandatory for the employers to prevent the commission of acts of sexual harassment. But India took 16 years to enact the Sexual Harassment of Women at Workplace Act, 2013 for prevention of sexual harassment against women at workplaces. This paper aims at highlighting the present status of women at workplace despite of having the legislation recently enacted in India to prevent the sexual harassment at workplace. Paper discusses in detail what amount to be sexual harassment at workplace and different types of sexual harassment. It further illustrates the different legal provisions in different enactments in India including the Constitution of India to prevent such practices at work place and discuss how the Indian judiciary in pronouncing the judgments on sexual harassment cases also relied on international human rights conventions and norms. It further tries to analyze the haphazard in protecting females at workplace and highlight why it's challenging to eliminate sexual harassment at workplaces.

Key Words: Women, Sexual Harassment, work place, human rights violation, Legislation, Indian judiciary.

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"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...."

Late Chief Justice J.S. Verma, Supreme Court of India, *Vishaka v. State of Rajasthan*

I. PRELUDE

The blatant and widespread phenomenon of rape and sexual assault are the more commonly recognized forms of violence against women based on gender, while the more subtle issue of sexual harassment can be more repressive and intimidating.¹ Generally speaking, sexual harassment is a behavior with a sexual connotation that is abusive, injurious and unwelcome. It places the victims in an atmosphere of intimidation, humiliation or hostility. Across the globe today, the issue of sexual harassment has become ubiquitous transgressing all limits and borders. It has registered its presence at every workplace across the world.² It seems that the term "sexual harassment" came to be used in the public media only from the year 1975 onwards. Till then no term existed to describe what is now universally called "sexual harassment".³ The term sexual harassment "in a legal sense" seems to have been first coined in the U.S. and subsequently "exported" from there to other industrialized countries of the world.⁴ In India, the term 'sexual harassment' was first defined in a formal legal sense in the year 1997 by the Supreme Court in *Vishaka v. State of Rajasthan*.⁵ The Supreme Court of India acknowledged the gravity of sexual harassment of the working women at the workplace and laid down guidelines⁶ thus making it mandatory for the employers to prevent the commission of acts of sexual harassment

¹ Ritu Gupta, *Sexual Harassment at workplace : A detail study of the sexual harassment of women at workplace (Prevention, Protection and Redressal) Act, 2013*, 1(1st ed., 2014)

² *Ibid* at 2

³ Alok Bhasin , *Sexual Harassment at work*, 3(2nd ed.,2015)

⁴ *Ibid*

⁵ (1997) 6SCC241: AIR 1997 SC 3011

⁶ The guidelines issued by the Hon'ble Supreme Court were treated as law declared by the Hon'ble Supreme Court under Article 141 of the Constitution of India.

and also to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment.⁷ In 2013, after a span of 16 years, India finally enacted the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 for prevention of sexual harassment against women at the workplaces. Though the Constitutional commitments of the nation to women were translated through various planning processes, legislators, policies and programs over the last six decades, but a situational analysis of social and economic status of women does not reflect satisfactory achievements in any of the important human development indicators.⁸ Presently India ranks 127th on gender inequality index and 114th on gender gap in the world.⁹

No doubt that each incidents of sexual harassment at the place of work results in violation of the fundamental right to gender equality and the right to life and liberty – the two most precious fundamental rights, guaranteed by the Constitution of India. I.P.C. 1860, C.P.C. 1908, Cr. P.C. 1973, Indian Evidence Act, 1872 along with many other special Acts and welfare legislation deal with this issue in one way or the other and provide for specific protection of women from such aberration.¹⁰ Also various international Conventions on the subject to which India has been a signatory and ratified, become a source of law. In addition to these, landmark judicial pronouncements (dealing with sexual harassment at workplace) filled up the vacuum spread on the horizon till the enactment of 2013 legislation. Since, sexual harassment results in violation of the fundamental right of women to equality as per Articles 14 and 15 and her right to live with dignity as mentioned under Article 21 of the Constitution, the Government of India by enacting the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013, extended the Vishaka guidelines issued by the Supreme Court of India in 1997 and further for the first time, acknowledges sexual harassment at workplace as a human right violation. With this landmark judgment the apex court of India laid down the foundation and paved the way for legislation for women at workplace in India, which took the shape of legislation in the year 2013. This legislation supplants the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this legislation.¹¹ Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it.¹²

Sexual harassment at workplace creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth too. In spite of Constitutional provisions which provides every citizen the 'right to practice or carry out any occupation, trade or businesses, which includes the right to a safe environment, free from all forms of harassment,¹³ significant numbers of women are routinely subject to various kinds of sexual harassment at their workplace. It is because of traditional gender roles of our society, where women disproportionately occupy inferior position in the workplace and face intimate violations by men often.

II. A STATISTICAL OVERVIEW OF SEXUAL HARASSMENT IN INDIA

There is no centralized mechanism to collect data on sexual harassment in the workplace, and such incidents are generally vastly under reported the data available only reflects a small portion of the incidents of sexual harassment at the workplace nationally. According to Oxfam, 17% of women in both formal and informal sector faced sexual harassment at work in India.¹⁴ Additionally, in 2014 the Ministry of Women and Child Development, stated that the "the number of complaints of sexual harassment of women at work places registered with the Commission of Women (NCW) during the last two years and current shows an increasing trend." In 2014, a total of 526 cases of sexual harassment were reported,¹⁵ the National Crime Records Bureau (NCRB) has started collecting data under insult to the modesty of women (Section 509 IPC) at office premises and other places related to work since 2014. A total of 57 cases were reported at office premises and 469 cases were registered at other places related to work during 2014.¹⁶ In general, a total of 3, 37922 cases of crime against women (both under various sections of IPC and SLL) were reported in the country during the year 2014

⁷ Khushbu Sahu, "Sexual Harassment of Women at workplace Act, 2013 : A half baked move to women's safety at work", LawZ, Vol 16 No. 4 Issue 176, April 2016 at 34.

⁸ Supra note 1

⁹ Timesofindia.indiatimes.com last accessed on 29/11/2016.

¹⁰ Supra note 1 at 69

¹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)Act, 2013 at <https://en.wikipedia.org> last accessed on 29/11/2016

¹² Ibid.

¹³ Article 19 (g) of Constitution of India.

¹⁴ The Times of India, November 28, 2012, timesofindia.indiatimes.com last accessed on 5/12/2016.

¹⁵ The Indian Express, August 8, 2015, also see Piyush Pandey, "Sexual Harassment cases at workplace more than double in 2014", November 27, 2015 at www.thehindu.com last accessed on 6/12/2016.

¹⁶ Press Information Bureau, Government of India ,Ministry of Women and Child Development; Sexual Harassment of Women at workplace at 7August 2015 at pib.nic.in/newsite last accessed on 6/12/2016

as compared to 3, 09546 in the year 2013, thus showing an increase of 9.2 % during the year 2014.¹⁷ According to the data compiled by the National Commission for Women (NCW) and National Crime Records Bureau (NCRB), there is a noticeable rise in sexual harassment at the workplace. A gender diversity study (Team Lease 2016) has revealed that more than 72% women feel that gender discrimination exists at workplaces and that initiative like anti-sexual harassment policies need to be boosted by the employers. This was reflected in the data provided by the corporate affairs ministry, Government of India which showed that reported complaints of sexual harassment within the top 100 companies listed on the National Stock Exchange doubled in the financial year 2014-15 as compared to the previous one.¹⁸

III. WHAT IS SEXUAL HARASSMENT AT WORKPLACE?

Sexual harassment is probably the one experience that, regardless of how it is defined, is found in almost all cultures. It is also behavior very pervasive to both organized as well as unorganized work sectors. It may, of course, vary from culture to culture in terms of intensity and recognition. So in general we can say that, Sexual harassment is any sexually – oriented conduct that may endanger the victim’s job, negatively affect the victim’s job performance or undermine the victim’s personal dignity. It may manifest itself physically or psychologically. Its milder or subtle forms may imply verbal innuendo, inappropriate affectionate gestures or propositions for dates and sexual favours. However it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.¹⁹ As noted by Dickson CJ of the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.*²⁰, in most cases of sexual harassment, the perpetrator misuses “ a position of power to import sexual requirements into the workplace thereby negatively altering the working conditions of employees who are forced to contend with sexual demands”. Sexual harassment involves “the unwanted imposition of sexual requirements in the context of a relationship of unequal power”.²¹ In a Canadian case, *Malone J* held that the plaintiff’s conduct, which involved “leering, looking at the bodies of female employees in an inappropriate manner and making sexually suggestive comments”, amounted to “sexual harassment”.²² In simple terms it can be understood as unwanted direct or indirect sexual contact, remarks or conduct on part of the male colleagues against their women colleagues at any workplace. Thus, sexual harassment at workplace includes both physical as well as mental aspects. While the Universal Declaration of Human Rights adopted on 10 December, 1948 set out the general ban on discrimination of any kind, including on the basis of sex (article 2) and the two international Covenants adopted on 16 December, 1966 likewise prohibit discrimination on the basis in general terms.²³

Though it is difficult to define what constitutes sexual harassment at workplace but as noted by International Labour Organization (ILO), sexual harassment, at the international level, “has been addressed as both an aspect of gender discrimination and as a form of violence against women”. International Labour Organization considers sexual harassment as a violation of fundamental rights of workers, declaring that it constitute a problem of safety and health, a problem discrimination, an unacceptable working condition and a form of violence, usually against women workers.²⁴ U.S. Equal Employment Opportunity Commission defines sexual harassment as any form of uninvited sexual attention that either explicitly or implicitly becomes a condition of one’s work.²⁵ The European Commission (EC) code of practice defines sexual harassment as conduct affecting the dignity of women and men at work. Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This includes unwelcome physical, verbal or non-verbal conduct”.²⁶ The Committee on the Elimination of Discrimination against Women (CEDAW) constituted by the United Nations in its General Recommendations No. 19 (January 1992) titled “ Violence against Women” said that sexual harassment is a form of gender – based violence. It is gender based because “it is directed against a woman because she is a woman or which affects women disproportionately”. This includes “acts which inflict physical, mental or sexual harm or suffering, threats of such acts and coercion”.²⁷ The Supreme Court of India has defined it in the case of *Vishakha V. State of Rajasthan, 1997* as: “Any unwelcome sexually determined behavior (Whether directly or by implication) as physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing

¹⁷ Crime against women –National Crime Records Bureau at ncrb.nic.in/statPublicationlast accessed on 5/12/2016

¹⁸ Anagha Sarpotdar, “Implementing or Ignoring the Law on Sexual Harassment?” *Economic & Political Weekly*, November 5, 2016 at 27.

¹⁹ *Supra* note 3 at 10

²⁰ (1989) I SCR 1252: (1989) 59 DLR(4th) 352 as cited in Alok Bhasin , “ Sexual Harassment at work”, at 10

²¹ *Supra* note 3 at 18

²² *David Dotchin v. Saskatchewan (Workers’ Compensation Board)*, 2002 SKQB279 as cited in Alok Bhasin , “ Sexual Harassment at work”, at 11.

²³ Shivangi Prasad & Attreyi Mukherjee, *Handbook on the law of sexual harassment at work place* at xl.iii.

²⁴ Dr. Reena Choudhary , *Sexual Harassment : Threat to working women* at 2

²⁵ *Ibid*

²⁶ *Id.*

²⁷ *Supra* note 3 at 21

pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”²⁸ In, *Apparel Export Promotion Council Vs. A.L. Chopra*²⁹, the Hon’ble Supreme Court while deciding an issue whether the act of a superior officer (wherein such superior officer tried to molest his junior woman employee) would amount to sexual harassment, the court relied on the definition of the term ‘sexual harassment’ laid down by the Supreme Court in the Vishakha judgement (which is similar to the definition of the sexual harassment provided in the Act) held that “*the act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly amounted to sexual harassment.....*”. Thus the above definitions makes it very clear that any unwelcome sexually coloured behavior by a male against a female employee will be treated as sexually harassment at workplace. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines the term “sexual harassment” in Section 2(n) as follows: “*sexual harassment includes any one or more of the following unwelcome acts or behavior (whether directly or indirectly or by implication) namely –*

- i. *physical contact or advances; or*
- ii. *a demand or request for sexual favour; or*
- iii. *making sexually coloured remarks; or*
- iv. *showing pornography; or*
- v. *any other unwelcome physical, verbal or non-verbal conduct of sexual nature;*

According to the “Handbook on Sexual Harassment of Women at the Workplace” produced by the Ministry of Women and Child Development, “Sexual harassment includes anyone or more of the following unwelcome acts or behavior (whether directly or by implication), namely: physical contact of advances; a demand or request for sexual favours; making sexually coloured remarks; showing pornography; any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.” Furthermore, the handbook explains the sexual harassment does not necessarily need to be physically violent in nature but it also includes “situations that start off innocently [but] end up inappropriate and unprofessional behaviours.” It also stresses that the experiences of sexual harassment is subjective.³⁰

Following circumstances in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:³¹

1. *Implied or explicit promise of preferential treatment at work; or*
2. *Implied or explicit threat of detrimental treatment at work; or*
3. *Implied or explicit threat about present or future employment status; or*
4. *Interference with work or creation of an intimidating or offensive work environment; or humiliating treatment likely to affect health, safety or self-esteem.*

Sub-section (2) of Section 3, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, thus, also recognizes “quid pro quo sexual harassment” as well as “hostile environment sexual harassment”. Section 354-A, Indian Penal Code, 1860 defines the term “sexual harassment”, thus: A man committing any of the following acts-

- i. *Physical contact and advances involving unwelcome and explicit sexual overtures; or*
- ii. *A demand or request for sexual favours; or*
- iii. *Showing pornography against the will of the woman; or*
- iv. *Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.*

Despite both national and international efforts to eliminate sexual harassment, there is no single definition of what constitute prohibited behavior. Generally, international instruments define sexual harassment broadly as a form of violence against women and as discriminatory treatment, while national laws focus more closely on the illegal conduct.³²

The above discussion on the understanding of sexual harassment of women at workplace make it important to know that the global labour force has shown a significant increase in the participation rate of women to almost 50% worldwide. Further, women have been penetrating professions and occupations that were, for the most part, the domain of male workers. Than there exist a great disparity among laws in various countries dealing with sexual harassment.³³

²⁸ Sexual Harassment of women at workplace in India at www.indiacelebrating.com last accessed on 4/ 12/ 2016

²⁹ AIR 1999 SC 625

³⁰ Tarini Date, “Workplace Harassment” at safecity.in/what-is-workplace-harassment last accessed on 5/12/2016

³¹ Rajesh Arora, “Prevention of Sexual Harassment of Women at Workplace : Need for changes in the policy”, Chartered Secretary: The Journal for Corporate Professionals, Vol. XLIV No. 05 May 2014 at 555, also see Section 3 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

³² Stop Violence against women : Sexual Harassment at www.hrlibrary.umn.edu last accessed on 5/12/2016

³³ Supra note 23 at xli.

Types of Sexual Harassment: Sexual harassment at workplace is generally takes one of two forms: ³⁴

- Quid pro quo harassment – Literally translated from the latin, quid pro quo means “this for that.” In quid pro quo sexual harassment, there is a promise of a work-related benefit, or the threat of a work-related sanction, in exchange of sexual favors such as promises of promotion, higher pay etc. and refusal to comply with a ‘ request’ is met with retaliatory action such as dismissal, demotion, difficult work condition etc.
- The creation of a Hostile Environment Based on Sex: A hostile environment based on sex exists when an employee is subject to a pattern of exposure to unwanted sexual behavior in the workplace, and where supervisors or managers take no steps to discourage the inappropriate behavior. So hostile working environment is more pervasive form of sexual harassment involving work conditions or behavior that make the work environment ‘hostile’ for the woman to be in. Certain sexist remarks, display of pornography or sexist/obscene graffiti, physical contact/ brushing against female employees are some example of hostile work environment.

IV. VICTIMIZATION IN SEXUAL HARASSMENT

Victimization of any kind stems from a variety of perception and beliefs surrounding sexual harassment including a feeling of disturbance of traditional power dynamics within the organization, a wish to ‘nip the problem in the bud’ by eliminating any form of dialogue around it or even to prevent loss of branding or reputation to the organization or the perpetrator.³⁵ It is true that sexual harassment of women at (mostly by men) workplace is rampant and mostly remain unreported. Male dominance is a crucial factor which is most of the time is a power play opposed to sexual desire.³⁶ Some scholars argued that it is primarily about men exercising power over women. They stated that sexual harassment is connected with disadvantaged status of women at work and subordinate position in society. Mostly it is used as a weapon to punish women who deviated from traditional gender roles.³⁷ Victimization (that is , unfair treatment of a person based on perceived inequality of various factors such as gender, sex, age, socio-economic standing, etc.) in sexual harassment can occur at three stages in the life cycle of an incident as illustrated below: ³⁸

- **Through sexual harassment:** Victimization of a woman in the context of employment – for example, by a supervisor or a colleague, in the discharge of her duties or at her work place.
- **Through retaliation:** Victimization of a woman through retaliatory measures against her by the perpetrator, or the employer for having complained against sexual harassment.
- **Through third- party hostility:** Victimization of a woman who has complained against sexual harassment through discriminatory or detrimental behavior in relation to her – for example. Negative comments or discriminatory behavior or that underline a difference of opinion between the woman and the organization.

It is submitted that the Act fails to prohibit and minimize retaliation against victims of sexual harassment as it does not contain adequate provisions to address victimization through retaliation or third party hostility.

V. CAUSES AND IMPACT OF SEXUAL HARASSMENT OF WOMEN

Patriarchal attitudes and values are the biggest challenges in the implementation of any law concerning women in our society. A general feeling of contempt and disrespect for women among male community is also a prominent reason whereby women are considered only as an object to fulfill sexual desire of men. Apart from this, sexual perversion of mind among certain individuals is also one of the major reasons of sexual harassment of women at workplace. As more and more female employees are being recruited in both public as well as private sector, such men have got an easy access to indulge in sexually perverted behaviours. Jealousy at workplace is also a reason for such crimes against women employees; a male employee would not like to see his female colleague to get success, promotion or incentives by the employer. Thus there can be several and varied reason for sexual harassment of women at workplace but the essential elements of all such reason is the deep rooted feeling of male superiority among men in general. The social conditioning of men in a patriarchal system reinforce such feeling generation after generation which creates the base of crimes like sexual harassment at workplace.³⁹ So far the impact is concerned, being sexually harassed can affect’s one’s physical and emotional health as well as their vocational development. Experiences of sexual harassment can contribute to what has recently been labeled as ‘sexual harassment trauma syndrome’. The effect from sexual harassment can be seen on the levels of physical, emotional, interpersonal, and career development of women’s lives. Additionally, harassment victims often experience a type of secondary victimization when attempting to deal with the

³⁴ Supra note 24 at 5, also see Ritu Gupta, “Sexual Harassment at workplace: A detail study of the sexual harassment of women at workplace (Prevention, Protection and Redressal) Act, 2013 at 21.

³⁵ Suhani Rao, “Bias and the Anti – Sexual Harassment Law” Lex Witness, Vol 6 Issue 11 June 2015, at 27

³⁶ Ibid.

³⁷ Id. at 27

³⁸ Id.

³⁹ Sexual Harassment of Women at Workplace in India at www.indiacelebrating.com last accessed on 5/1/ 2017

situation through legal or institutional means.⁴⁰ It can be analyzed that patriarchal attitudes and values are the biggest challenges in implementation of any law concerning women in our society. Combating these attitudes of men and women and the personnel involved or responsible for implementation of laws and system is most crucial in prevention of unwanted sexual behavior. Preventing and avoiding sexual harassment involves all levels of employees and persons in any organization – employees and colleagues, management and bodies like trade unions. Most importantly it requires for the employers to act before a problem occurs.⁴¹ Hence one of the prime objectives should be to change behavior and attitude to ensure the prevention of sexual harassment at workplace.

VI. EXISTING INDIAN LAWS ON SEXUAL HARASSMENT

The sexual harassment at work place is not so far recognized as a legally distinct type of prohibited activity in umpteen numbers of countries across the world. Legal system in such countries tends to bring such acts within the scope of ‘existing proscribed behaviour’ either under criminal or civil laws. Until *Vishakha* Case, India has also been one such country where there are plethora of legal provisions to identify, recognize and define this problem, may be, under various distinct categories and without identical terminologies.⁴² It is truly said by Dr. A.S. Anand CJ. in *Apparel Export Promotion Council v. A.K.Chopra*,⁴³ that each incident of sexual harassment at the place of work results in violation of the fundamental right to gender equality and the right to life and liberty – the two precious fundamental rights, guaranteed by the Constitution of India.

In India, The Indian Penal Code, 1860; The Code of Civil Procedure, 1908; The Code of Criminal Procedure, 1973; The Indian Evidence Act, 1872 along with many other special Acts, and welfare legislations deal with this issue in one way or the other and provide for specific protection of women from such aberration.⁴⁴ Also, various international conventions on the subject, to which India has been a signatory and has ratified, become a source of law. In addition to these, various landmark judicial pronouncements (dealing with sexual harassment at work place) filled up the vacuum spread on the legal horizon till the enactment of the 2013 legislation.⁴⁵ As enshrined in the Preamble of the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution. A safe work place is therefore a woman’s legal right. Indeed the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of Part III of the Indian Constitution. The equality code of Indian Constitution is also comprises in Part IV of the Constitution in Articles 38, 39, 39A, 41 and 46.

In Indian criminal law, there is no chapter specifically dealing with ‘violence against women’ and available provisions to tackle such problem lie scattered under various chapters. Some provisions of the Indian Penal Code may be evoked in case, act, or incident of sexual harassment at workplace namely

Section 209: Obscene acts and songs, to the annoyance of the others like:

- a) *Does any obscene act at any public place or*
- b) *Sings, recites or utters any obscene songs, ballad or words in or near any public place.*
Punishment: Imprisonment for a term up to 3 months or fine or both. (Cognizable, bailable and triable offense.)

Section 354: Assault or use of criminal force on woman with intent to outrage her modesty.

Punishment: 2 years imprisonment or fine or both.

Section 376: Rape

Punishment: Imprisonment for life or ten years and fine.

Section 509: Uttering any words or making any gesture intending to insult the modesty of a woman.

Punishment: Imprisonment for one year or fine or both. (Cognizable, bailable offence)

Section 354-A, Indian Penal Code (IPC) specifically defines the offence of “Sexual Harassment” and also provides punishment therefore.⁴⁶ Section 354-B, 354-C, 354-D are also inserted in the IPC by the Criminal Law (Amendment) Act, 2013.

Section 354-A: Sexual harassment

(1) A man committing any of the following acts

- i. *Physical contact and advances involving unwelcome and explicit sexual overtures; or*

⁴⁰ The impact of sexual harassment on the job at faculty.elmira.edu last accessed on 9/1/2017

⁴¹ Neeta Raymond, Sexual Harassment at Work, The Combat Law : Human Right Magazine vol. 2 Issue 3 , August-September 2003 at www.indiatogether.org last accessed at 5/1/2017

⁴² Supra note 1 at 69

⁴³ AIR 1999 SC 625

⁴⁴ Supra note 39

⁴⁵ Supra note 39 at 70

⁴⁶ Section 354-A was inserted in the Indian Penal Code by the Criminal Law (Amendment) Act, 2013, which received the assent of the President on 2-4-2013 and came into effect retrospectively on the 3-2-2013. Prior thereto , no criminal law enactment in India specifically defined the term ”sexually harassment” or dealt with cases of “sexual harassment” as such. Therefore, it became necessary to determine whether the act in question fell within the mischief of other offences defined under the Indian Penal Code. As cited in Alok Bhasin , “ Sexual Harassment at work”, at 589.

- ii. A demand or request for sexual favours; or
- iii. Showing pornography against the will of a woman; or
- iv. Making sexually coloured remarks,

Shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may be extend to one year, or with fine, or with both.

The Indecent Representation of Women (Prohibition) Act, (1986) is although not known to have been used in cases of sexual harassment; the provisions of this act have the potential to be used in two ways:⁴⁷

- If an individual harasses another with books, photograph, painting, pamphlets, packages etc, containing “indecent representation of women”, they are liable for the minimum sentence of two years.
- ‘A hostile working environment’ type of argument can be made under this act. Section 7 (offences by companies) – holds companies where there has been ‘indecent representation of women’ (such as the display of pornography) on the premises guilty of offences under this act. Punishment is minimum sentence of two years.

VII. SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013: AN ANALYSIS

With the change in time and increase in work participation rate of women, it was felt that guidelines and norms are not sufficient to deal with the incidents of sexual harassment of women at workplaces. Therefore it became utmost necessary to enact a comprehensive legislation focusing solely on prevention of sexual harassment as well as providing a faster and easy redressal mechanism. A strong piece of legislation was the need of the hour to deal with this issue and accordingly the Act was enacted in 2013.⁴⁸ The Act is named as, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Act was certainly one of the biggest step for not only providing protection to women at work but also towards employment laws. This Act can be regarded as a first successful effort towards building a safe and dignified working atmosphere for the women in our Indian society. In an attempt to give legal clothing to the judicial pronouncement and guidelines led down in the case of Vishakha and others vs. State of Rajasthan , this legislation gave true meaning to Articles 14,15 and 21 of the Constitution of India thereby giving effect to the right to work with dignity and freedom of life and liberty to fair sex.⁴⁹ Sexual harassment is also considered a violation of a right to practice any profession or to carry on any occupation, trade or business as guaranteed under article 19 (1) (g) which includes a right to a safe environment free from sexual harassment. So the Act also enacted with the objective to provide gender equality at the workplace. Hence the institutionalization of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 is a landmark move, and furthers the Criminal Law Amendment Act 2013 Section 354A, 354B, 354C, 354D further supports the Act.

The essential problem with sexual harassment is that it emphasizes the sexuality of victims over their role as workers and thereby imposes less favourable working conditions upon such workers on the basis of their gender. The Supreme Court in Vishakha case emphasized on the fact that the sexual violence inflicted against the victim showed a serious lapse on the part of the State government to provide ‘safe working environment to the saathins’ i.e. their employees. In the light of these stipulations, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 gets intrinsically linked with Labour Law. As the labour law relates to the relationship between the employers and the employee, and thus the Act addresses this problem through the labour prototype It become necessary to clarify that the Act specifically relates to employment relationships and does not cover acts arising out of the conduct of a party that does not fall within the said purview.⁵⁰ The implications and the impact of the Act on the employer are as follows:

⁴⁷ ‘Laws on Sexual Harassment’ at safedelhi.jagori.org accessed on 12/12/2016. Also see sexual harassment at www.pathlegal.in last accessed on 12/12/2016.

⁴⁸ Supra note 7 at 34

⁴⁹ Supra note 7 at 36

⁵⁰ Gibran Naushad & Susanah Naushad , The sexual harassment of women at workplace :An unmanned territory, at www.indialawjournal.org last accessed on 13/12/2016

What is 'Sexual Harassment'?	“ Sexual harassment” includes unwelcome acts or behavior (Whether directly or by implication) such as physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography etc
Who does the Act apply to?	Applies to an “aggrieved woman”, which is a woman, of any age and whether employed or not, who alleges to have been subjected to any act of sexual harassment.
Who is responsible for implementing the provisions of the Act?	Employer’s responsibility : <ul style="list-style-type: none"> ▪ Provide a safe working environment. ▪ Constitute the internal complaints Committee (ICC) ▪ Display the penal consequences of Sexual Harassment at a conspicuous place in the workplace. ▪ Organise orientation programmes for the members of the internal complaint committee. ▪ Organise awareness programmes for the employees.
Where it is applicable?	At the “workplace”, which include “any place visited by the employees, arising out of, or during the course of employment, including transportation provided by the employer”.

As discussed earlier, this Act can be regarded as a first successful effort towards building a safe and dignified working atmosphere for the women in the Indian society. But the question that arises to be considered is “Whether the legislation has been able to serve its purpose or this legislation is mere a written piece of law?” “Whether the women are getting benefits at their working place after the legislation comes into existence?” After going through all the provisions of the Act and it is very much clear that this legislation has not been implemented well to serve its underlying purpose. To make the legislation effective first and foremost step would be to make it gender neutral completely and also to cover the male employees in the definition of aggrieved employees thereby directing against both male and female employees alike.⁵¹ Next area of analysis is a procedural one. The requirement of constitution of an internal complaint committee (ICC) leads to confusion and therefore needs to be clarified. Firstly, the current language of the legislation gives the impression to appoint any employee itself who has knowledge of law or such as a member of ICC; it should therefore be made a strict requirement that only an outsider or a NGO worker who is unrelated to the management of the organization be made a member of ICC. Second issue is with regard to the requirement of a separate ICC for each branch and office with more than 10 employees is vague.⁵² Several questions are left unanswered like, What if there is no permanent female employee but only temporary female staff, interns or trainees? What if there is only one or two female employees and total no. of employees is less than 10? Thus, this requirement of separate ICC is cumbersome as far as small organization and unincorporated entities are considered and moreover many organizations mould this provision in a way that suits them and interpret it as per their fancies. Therefore it is very much required that such questions are answered and a clear picture is displayed as in how ICC would be constituted in all such cases. Moreover currently there is no provision which specifically prescribes the jurisdiction of LCC. Section 6 of the Act merely says that in case ICC is not instituted for less than 10 employees, then the matter would go to LCC leading to an impression that ICC is just an option and not mandatory requirement, therefore a clarification is needed with regard to this issue in the Act.⁵³ There is also a requirement in the Act to submit annual report to District officer. It is hard reality that same is not being implemented by even 10% of the organizations. Implementation mechanism for this is not provided in the Act as a result this provision is hardly followed in real world. It should be made Stricter. Further it is also left unanswered by the Act “Who is a District Officer?”⁵⁴ Next is the issue that the Act focuses only on employment relationship rather than on the whole of the working world. This leads to immense confusion among professional, technical and educational institutions in relation to students, who are though not employed, even while forming part of such institutions while pursuing their education. The question which arises for consideration is “Whether the Act applies to such institutions?”⁵⁵ The next issue that comes into consideration is that the Act prescribe a statutory period of filing complaint as three months, which can be further extended by three months ‘for reasons to be recorded in writing’. This provision totally undermines the very objective of the Act as the same is neither provided under the guidelines issued by the Hon’ble Supreme Court nor any of the judicial precedents have ever discussed of laying down any period of limitation for the filing complaints of

⁵¹ Supra note 49

⁵² Supra note 7 at 37

⁵³ Ibid.

⁵⁴ Id.

⁵⁵ Id.

sexual harassment at the workplace.⁵⁶ The Act also provides for a process of conciliation to be conducted by the ICC at the request of the aggrieved woman prior to initiating an inquiry. This provision for conciliation is completely incongruous in law which purports to provide a redressal mechanism for women aggrieved by behavior which the statute itself prohibits. Apart from that, the statute fails to adopt the more nuanced approach to the conciliation which is provided by CPC 1908, where conciliation/mediation procedure is handled by body quite separate from that adjudicating the dispute. However, the provision which holds the potential of the most harm to this statute is Section 14 which provides for the punishment for filing false or malicious complaints leading false evidence or producing false documents. This provision has been criticized by Verma Commission Report as “Red Tag” provision and its existence on the statute book is most unfortunate indeed.⁵⁷ Practically there are endless issues in relation to implementation of this legislation. This legislation is in need to be overcome from the drawbacks and shortcomings. Unless the drawbacks and shortcomings are addressed properly, the success of this legislation would be only partial and not too effective.

VIII. RECENT LITIGATIONS

The Indian judicial experience with sexual harassment started with the case of *Vishakha v. State of Rajasthan*. The case dealt with the brutal gang rape of Bhanwari Devi, a social worker who was working to spread awareness to end child marriage. In this case Court decided to create a protective framework for the female workforce of this country, an area where there had been huge lacunae in Indian law. Thus comprehensive guidelines were issued by the Supreme Court to ensure that the female workforce of this country is protected from sexual violence and sexually charged gender-discrimination in the workplace. There were several judgments after the Vishakha judgment that emphasized on the need for a comprehensive law on sexual harassment. The case of *Apparel Export Promotion Council v. Chopra*⁵⁸ is one of them, which emphasized that sexual harassment is gender based discrimination and quoted the International Labour Organization for the same. The sexual Harassment at Workplace Bill was tabled in the Parliament in 2007. This in turn prompted case such as *D.S. Grewal v. Vimmi Joshi*⁵⁹ that emphasized on the stipulation of the bill while delivering judgments related to sexual harassment. However none of them vigorously asked for a bill to be passed, thereby turning a blind eye to the issue related to sexual harassment.⁶⁰ In *Ropen Deol Bajaj v. K.P.S.Gill* case after being dragged on for more than 18 years, finally, the Supreme Court upheld the conviction of Gill for his offence. He was found guilty under Section 354 and 509 of IPC and the court directed him to pay Bajaj Rupees two lakhs as compensation. This was the first instance where judiciary actually took a stand upholding women’s right.⁶¹ In *Saudi Arabian Airlines, Mumbai v. Shehnaz Mudbhalkal*⁶² first time ever an employee won a legal battle in a labour court against her employers on the ground of sexual harassment. This judgment aptly illustrate that how a typical case of Sexual Harassment may include both ‘quid pro quo’ and ‘hostile work environment’ elements.⁶³ *Medha Kotwal Lele’s case*⁶⁴ reveals the sexual harassment of female students in educational institutions. The Apex Court held that the Vishakha guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation.⁶⁵ There have been other important cases that have helped in interpreting sexual harassment cases even more clearly. These include- *Swapna Barman V Subir Das*,⁶⁶ *Miss Radha Bai vs The Union Territory of Pondicherry*,⁶⁷ *A.V. Ramana vs State Of Gujarat*.⁶⁸ In all these case Recently Tehlka editor-in-chief Tarun Tejpal has been booked under Section 354-A (Sexual Harassment, Physical contact, advances involving unwelcome and explicit sexual overtures, or any other unwelcome physical, verbal or non- verbal conduct of sexual nature), 376(rape) and 376 (2) (k) (rape by a person of a woman in his custody taking advantage of his position) of the IPC.⁶⁹ The former Supreme Court judge has also

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ AIR 1999SC625 ; (1991) 1 SCC 759

⁵⁹ (2009) 2SCC 210

⁶⁰ Supra note 50

⁶¹ *Rupan Deol Bajaj v. KPS Gill*, (1995) 6SCC 194 as cited in Ritu Gupta, “Sexual Harassment at workplace : A detail study of the sexual harassment of women at workplace (Prevention, Protection and Redressal) Act, 2013 at 45

⁶² (1999)2 LLJ 109 (Bom).

⁶³ Supra note 1 at 49

⁶⁴ 2004 (5) SCALE 573; (2013) 1 SCC 297

⁶⁵ Supra note 1 at 62

⁶⁶ (2004) 1 GLR 168

⁶⁷ 1995 AIR 1476

⁶⁸ *A.V. Raman v. State of Gujarat & others*, in the High Court of Gujarat at Ahmadabad, Criminal Misc Application No. 11878 Of 2007.

⁶⁹ Tehlka sexual assault case : Tarun Tejpal in 12- day judicial demand, gets special cell DNA e-paper Wed, 11 Dec 2013 at www.dnaindia.com last accessed on 8/1/ 2017

step down as head of West Bengal Human Right Commission in 2014 after a law intern accused him of sexually harassing her at hotel room. The Chief Justice of India took immediate action and constituted a three-member Supreme Court panel comprising of Justice Lodha, Justice H.L. Dattu and Justice Ranjana Prakash Desai to probe the charges of Sexual Harassment against the retired Supreme Court judge. The panel indicated Ganguly for 'unwelcome behaviour' and 'conduct of sexual nature' promoting his resignation.⁷⁰

The role of judiciary has been instrumental in advancing the concept of sexual harassment in India, so much so that the recent Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, has come into being as a direct result of the Vishakha judgment. In this judgment the Supreme Court held that each incident of sexual harassment results in a violation of the fundamental rights of gender equality and the right to life and liberty under the Indian Constitution. The court further held that the fundamental right in the Indian Constitution 'to practice any profession or to carry out any occupation, trade or business' is also violated by incidents of sexual harassment. Judiciary in all the cases of sexual harassment lays down stress on gender equality with protection from sexual harassment and right to work with dignity, which is universally recognized as a basic human right. The Indian judiciary while pronouncing the judgments on sexual harassment cases also relied on international human rights conventions and norms.⁷¹ So the role of judiciary cannot be undermined and rather the efforts of judiciary should be complimented with greater efforts from the legislature and the executive to create a fool-proof system to protect such incidents and protect the women-workforce otherwise the efforts of judiciary will become ineffective. So the enactment of laws with strict compliance is the need of the hour to protect women from sexual harassment at workplace.

IX. CONCLUSION

While a majority of the women still face discrimination and gender bias, in the last few decades, the number of women successful in politics, technology and business etc, is definitely on the rise. Society has started seeing women in a different perspective. There is no profession today where women are not employed. However, it is true that working women have to face problems by virtue of their sex. Recent news of sexual harassment of women staff in Directorate General of Civil Aviation (DGCA) headquarters in Delhi⁷² depict the picture of the unsafe working environment for women and reveals the poor implementation of the POSH Act. Moreover India's patriarchal society thinks of women only as a house makers and sexual objects and is generally subjected to exploitation and torture.⁷³ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Legislation") was certainly one of the biggest step for not only providing protection to women at work but also towards employment laws. This act can be regarded as a first successful effort towards building a safe and dignified working atmosphere for the women in our Indian society.⁷⁴ Prior to coming into force of this enactment, there was a black hole in the Indian law with regard to protection of women in the workplace that is, the place where she spends almost half of her time every day. In an attempt to give legal clothing to the judicial pronouncement and guidelines led down in the case of *Vishaka and others vs. State of Rajasthan*, this legislation gave true meaning to Articles 14, 15 and 21 of the Constitution of India thereby giving effect to the right to work with dignity and freedom of life and liberty to fair sex.⁷⁵ The need and intent behind the Act is fairly simple – creating a working environment that is favourable for women employed in India. It can be conclude that though we now have a specific law to prohibit sexual harassment at workplace apart from already existing landmark guidelines of the Supreme Court of India but the menace cannot be controlled until and unless the mentality of males in general would not change. Till the basic human dignity of women is not recognized and respected by the men, no law will be effective. It is important that Constitutionally guaranteed principles of equality among men and women do not remain only empty words and should be upheld in practice.⁷⁶ Despite being illegal, costly, and an affront to dignity, sexual harassment is pervasive and challenging to eliminate. Sincerity of purpose, interpretation of the legislation by the employers in keeping with

⁷⁰ Sonal Bhadoria, "Judge accused of Sexual Harassment named" November 29, 2013 at www.indiatimes.com last accessed on 8/1/2017

⁷¹ The international sources the Indian decision relies upon include women's rights provisions in international conventions, such as CEDAW and the ICCPR and the international customary law.

⁷² The Times of India, December 12, 2016

⁷³ Varsha Kumari, "Problems and challenges faced by urban working women in India", A dissertation submitted to the department of Humanities and Social Sciences, NIT Rourkela, Odisha (2014) at 9 at ethesis.nitrkl.ac.in last accessed on 9/1/2017

⁷⁴ Supra note 7

⁷⁵ Ibid.

⁷⁶ "Sexual Harassment of Women at Workplace in India" at www.indiacelebrating.com/social-issues last accessed on 3/12/2016

its spirit and contextualizing it with the struggle from which it emerged will go a long way in bringing about the safety of women employees at workplaces.⁷⁷ So as per the Supreme Court guidelines and legislation we have, the law should be apply to both organized and unorganized sectors and to all women whether working part time, on contract or voluntary or ad-hoc capacity. It is truly said by Swami Vivekananda, “ Country and Nations which do not respect women, have never become great nor will ever be in future”.

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⁷⁷ Anagha Sarpotdar, “Implementing or Ignoring the Law on Sexual Harassment?” Economic &Political Weekly, November 5, 2016 at 29.