

## **SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: ARE WOMEN SAFE AT WORK PLACE?**

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### **INTRODUCTION**

Sexual harassment at workplace is the violation of the rights of a person especially the women. when woman is sexually harassed at workplace it is called sexual harassment at workplace. Any person can be sexually harassed at workplace, even the men can be harassed too. But the most affected class is women. Mostly the women are sexually harassed by their co- workers, by their seniors or even by their employer. It is the violation of the right of women guaranteed by the Indian constitution under article 14 and 15, which guarantees right to equality to every person irrespective of their caste, creed, gender or race. Sexual harassment of women is a global phenomenon, which is prevalent in developed as well as developing nations. Sexual harassment of women is the hindrance in the growth and progress of the women. Workplace harassment is a type of sexual harassment of women. in most cases of the sexual harassment at workplace the harasser is a man and the victim is a woman. According to a report, in India, a woman is sexually harassed every 12 minutes. the women within the workplace report found out that 35% of ladies full- time corporate sector jobs have experienced harassment.

### **WHAT IS SEXUAL HARASSMENT?**

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

### **WHAT IS WORK PLACE?**

As per section 2 (o) of the posh act, workplace is any place which is visited by the employee during the course of employment, including the transportation provided to them by the employer to reach the place where the person is employed.

## **HISTORY BEHIND THE SEXUAL HARASSMENT AT WORKPLACE LAW IN INDIA**

Sexual harassment at workplace is prevalent all across the world nowadays but it is not recognised as a crime in all the countries. In India, for the first time in 1997, the framework for the sexual harassment at workplace was laid down by the supreme court in the landmark judgement of Vishakha v. State of Rajasthan. In 1992, a Dalit woman named Bhanwari Devi was, a social worker was gang raped by some people. She was working to stop the child marriages. When she tried to stop the child marriage, she was gangraped in front of her husband. Even the accused were pleaded not guilty. This incident revealed the serious problems that working women face day to day. It also highlighted the importance of framing the law to safeguard the rights of women at workplace. A petition was also filed by the social activists under the Supreme court. Finally, in 1997, the supreme court for the first time recognized the workplace sexual harassment as infringement of human rights. So, the Supreme court framed some guidelines which are known as “Vishakha guidelines” and also gave direction to the parliament to frame law on sexual harassment at workplace. And nearly after 15 years the parliament passed the prevention of sexual harassment of women at workplace (prevention, prohibition and redressal) Act, 2013.

### **VISHAKHA GUIDELINES<sup>1</sup>**

The supreme court in 1997 issued Vishakha guidelines and stated that the guidelines should strictly be followed at workplaces and were binding and enforceable in law. It had several important provisions. The supreme court put obligation on the employer or any other person responsible in a workplace. The employer is duty bound to prevent the sexual harassment at workplace. as per the guidelines, it is the duty of the employer whether private or public sector,

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<sup>1</sup> <https://www.scconline.com/blog/post/tag/vishakha-guidelines/>

to provide a safe environment for the women employees to implement certain clauses and provisions for the safety of women employee. The onus to provide a safe environment to the women employee is at the employer and if he does not perform these duties, he can be made liable for the punishment. And if the violations of the guidelines are repeated, then the licences can also be cancelled. The guidelines made it mandatory for all the organisations to set up the redressal committee in every organization so that the complainant can file a complaint without any delay and that the complaints are dealt properly. This committee will be headed by a woman. All the workplaces are included under the guidelines whether organised or unorganised. It defined the sexual harassment. As per the guidelines, sexual harassment includes “any one or more” of the following “unwelcome acts or behaviour” committed directly or by implication:

- Physical contact and advances.
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

### **Sexual Harassment of women at workplace (prevention, prohibition and redressal) Act, 2013<sup>2</sup>**

Sexual harassment of women at workplace (prevention, prohibition and redressal) Act, 2013 is the first codified legislation in India to deal with sexual harassment of women at workplace. This act was passed by broadening the scope of Vishakha guidelines, which were passed by the Supreme court in 1997. The 2013 act broadened the Vishakha guidelines. As per the act, the employer should constitute an internal complaint committee in every organization, which has 10 or more employees. It widened the scope of sexual harassment and defined sexual harassment of the victim, who could be a woman of any age and it does not matter if she is employed or unemployed. So, it can be said that the rights of every woman working or any woman who is visiting the workplace is protected under the act.

### **\*DEFINITION OF SEXUAL HARASSMENT**

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<sup>2</sup> <https://www.thehindu.com/news/cities/mumbai/sexual-harassment-at-work-the-limits-of-law>

Under the act, the behaviours have been defined which constitutes sexual harassment at workplace. these include:

- Any unwelcoming comments, remarks or double meaning talks.
- Asking sexual favours from someone, intimidation, threats and blackmailing the person who tries to speak against such acts.

The act also mentions five circumstances that amount to sexual harassment. These include:

- If the person who is presently in the position to dominant the will of the woman asks the favours from the woman or assures her of the preferential treatment in return of the favours,
- or threats of detrimental treatment.
- expressed or implied threats to the woman about her employment status in present or future.
- employer within 10 days. the report must be made available to both the parties. - interference of the accused with her work or creating the environment which is not favourable to the woman or in which either she feels intimidated or uncomfortable.
- humiliating treatment which is likely to affect her mental or physical health.

#### **PROCEDURE FOR FILING THE COMPLAINT**

Under the act, the complaint must be filed within three months from the day of incident. But the internal complaints committee can extend the time limit if it is satisfied that the conditions were of such type that the woman was not able to file a complaint within the time period specified under the act.

-ICC can settle the matter between the before the inquiry and at the request of the victim, but the base of the settlement should not be monetary.

-The ICC has been given the powers similar to those of a civil court. It can summon, examine any person and if required it can discover the proofs and can ask to produce the documents. It



can either forward the complaint of the victim or it can start an inquiry itself, which has to be completed within 90 days.

After the completion of the inquiry, the ICC must provide a report of its findings to the

-If the person is proved guilty, according to the findings and reports of ICC, it recommends that the employer must take actions in accordance with the provisions of the service rules.

After the recommendations of ICC, the victim can appeal in the court within 90 days.

### **FAILURES OF POSH ACT<sup>3</sup>**

POSH Act is the first codified legislation in India to deal with sexual harassment of women at workplace. but, even after the almost 8 years of the implementation of the act, the incidents of the sexual harassment are increasing day by day. There are many reasons for the failures of the act: One of the main issues with the act it only talks about the protection of the women at workplace. it does not talk about the protection of male and third gender employees. So, it is a gender biased legislation that does not recognize the rights of the male and third gender employees. Under the POSH Act, it is mandatory to constitute an internal complaints committee for any office or organization that has 10 or more employees. It means that the workplace that does not have 10 or more employees will not be included under the act. Under the act, only those women can file a complaint of sexual harassment who are employees of an organization. It fails to include the domestic workers in the purview of the act. Lack of awareness is another important reason. Many women do not know when and where to file the complaint. The act lays down that the chairperson/ presiding officer of the internal complaints committee shall be a woman employed at the senior level at the workplace among the employees. So, there are chances of her being biased because she is within the course of employment under the employer.

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<sup>3</sup> <https://indianexpress.com/article/explained/everyday-explainers/explained-posh-law-against-sexual-harassment-in-india>

## MEASURES TO PREVENT THE SEXUAL HARASSMENT AT WORK PLACE

- Urgent actions should be taken to prevent the sexual harassment at workplace.
- The existing laws for the prevention of sexual harassment at workplace should be properly implemented. Because the law presently in India is sufficient to deal with the problem, but the poor implementation of the legislation is the reason for the failure of the law.
- The rights and the identity of the victims should be protected and they should be given security so that they do not get afraid of filling the complaint.
- Stronger and clearer duties should be entrusted on the employer, because it is the duty of every employer to provide a decent and hospitable environment to its employees.<sup>4</sup>

## CONCLUSION

The sexual harassment of women at workplace (prevention, prohibition and redressal) Act, 2013 is no doubt a welcome legislation, but some steps are needed for the improvement. As India is advancing in its developmental goals and more and more women are joining the workforce, it is necessary to protect the rights of working women and provide them a safe and hospitable environment. Sexual harassment at workplace is a social change that needs to be addressed.

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<sup>4</sup> Decoding posh: analysis of India's regime against sexual Harassment  
<https://www.scconline.com/blog/post/2018/12/29/decoding-posh-analysis-of-indias-regime-against-sexual-harassment/>