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Sexual Harassment of Women at the Workplace

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ABSTRACT

Sexual harassment has been a prevalent menace in the society since a very long time. Several women are a victim to sexual harassment on a daily basis, the workplace being one such place where it is extremely prevalent. This paper is a case study related to the issue of sexual harassment faced by women at the workplace. The existing laws and policies related to sexual harassment, The POSH Act, and the various measures and initiatives that the government has taken to address this issue are some of the topics that are explored in this paper. The landmark case of Vishaka v. State of Rajasthan is also evaluated in this paper as it plays a very important role in gaining a better understanding of the topic.

I. INTRODUCTION

Background: Sexual harassment has always been one of the most toxic and filthy problems that society has ever faced. As a result of several sexual harassment cases in US during the 1970's, the term sexual harassment was coined. "Sexual harassment can be broadly defined as, unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature."² In simpler terms, an unwanted sexual behaviour is called sexual harassment.

In India this issue came into notice of the Indian judiciary with the case of Vishaka v. State of Rajasthan³, which took place in 1998. In this case, Bhanwari Devi, who was a social worker who fought against child marriage was brutally gang raped. This case has played an important role in shaping the laws and rules relating to sexual harassment at the workplace. It is also a landmark judgement. The court used this as an opportunity to construct a framework for the protection of the women work force in this country, and thus issued a comprehensive set of rules and guidelines to achieve this, and to mitigate the sexual violence and gender discrimination in the workplace.

After the Vishaka case there were other cases too that emphasised on the need for more elaborate and comprehensive rules and laws that are related to sexual harassment, one of them being the Apparel export promotion council v. A.K Chopra⁴. This case quoted the international

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² Un.org, <https://www.un.org/womenwatch/osagi/pdf/whatish.pdf> (last visited, 15th Nov, 2020)

³ Vishaka v. State of Rajasthan, (1997) 6 SCC 241

⁴ Apparel export promotion v. Chopra, (1999) 1 SCC 759

labour organization and stated that sexual harassment of women is gender-based discrimination.

The bill for sexual harassment at the workplace was first presented before the parliament in 2007. Soon after this some other cases like *Grewal v. Vimmi Joshi*⁵ acted as stipulations for the bill, however none of these cases strongly demanded for the passing of this bill. Finally, after a long period of 16 years the bill was passed.

This bill was not as comprehensive and as fault free as expected. Many essential provisions were not just faulty but also failed to take into consideration many aspects of sexual violence.

Importance and relevance of the topic: With the increased rate of industrialisation, rapid modernization in the different phases of all the economic activities, the employment of women in general and especially in the organized sector.

This has in turn lead to the increase in the sexual crimes that are committed against women in the workplace. This is not just an inhuman act but is also an illegal invasion of a women's privacy.

According to the Ministry of Child and Women Development the number of cases between 2014 – 2019 has shown a jump of 54%.

These are just the reported cases, if we take into consideration the number of unreported cases the numbers would be way higher.

In a survey conducted by the national commission for women for the working women revealed that many employees are reluctant to report the harassment that they face because they are afraid that it will affect their career, and so they silently suffer this brutality so that they are not at a disadvantage in any way.

40 per cent of the surveyed victims said that they usually brushed such provocations off; 3.54 per cent said that they approached their supervisors and reported these acts; 7.8 per cent made their colleagues aware; and only 1.4 per cent lodged complains with the police.

Roughly 10 per cent stated that they fought back, and 9 percent claimed that they tried to warn the offender.

These women faced harassment in many ways which also affected them mentally which were caused by acts like, winking, whistling, ogling, singing inappropriate songs, and unnecessary sexual gestures.⁶

⁵ *Grewal v. Vimmi Joshi*, (2009) 2 SCC 210

⁶ S.C Srivastava, *Sexual Harassment of women at workplace: law and policy*, Vol 39, Indian journal of industrial

Since this is such a prevalent problem it is of great importance.

II. THE CURRENT LAWS AND POLICIES RELATED TO THE HARASSMENT OF WOMEN IN THE WORKPLACE

INTERNATIONAL LAWS AND POLICIES REGARDING SEXUAL HARRASMENT OF WOMEN AT THE WORKPLACE

1. United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women

This established that, any kind of violence towards women is considered as sexual assault in places like work, education institutions etc. It also encourages improvement penal civil and other administrative sanctions to be created and also prevention measures to eradicate crimes like assault against women.

2. The Convention on the Elimination of all Forms of Discrimination against Women

This encourages state parties to take relevant steps to eradicate discrimination of women in all phases of life including workplaces, educational institutions, healthcare centres and other social and public places.

3. Beijing Platform for Action, para. 178

This identifies sexual harassment as a violent act and as a form of discrimination against women. It encourages the government to enforce rules on sexual harassment, and also encourages employers to formulate anti-harassment policies.

4. ILO Committee of Experts on the Application of Conventions and Recommendations

This has established sexual harassment as a form of sex discrimination.

5. International Covenant on Economic, Social and Cultural Rights

This contained many provisions that are specifically essential for women. The Article 7 throws light on the importance of fair working conditions for women that are not subject to any threats like sexual harassment.

SEXUAL HARRASMENT IN THE CONSTITUTION

In India, the Constitution aims to protect the rights of women through fundamental rights and directive principles of the state policy.

The Article 14 of the Indian Constitution talks about the right to equality, and the Article 15 of

the constitution talks about not discriminating based on the gender of a human being. Acknowledging the gender differences existing in the society the founding fathers of the constitution coined the Article 15 (3) this aims at framing special legislation to give more status to the class of women. The Article 16 of the Indian Constitutions elaborates on the importance of equality among citizens in employment. Article 19 (1)(g) ensures that every women in this country is entitled to practice any profession of her choice. Article 21 which talks about the right to life and liberty also ensures that all women are entitled to a safe, secure and dignified life, and Article 51(a) makes it the duty of each and every citizen to upkeep the dignity of women.

SEXUAL HARRESMENT IN INDIAN PENAL CODE

In the year 2013, there were significant changes that was made to the way that sexual harassment was viewed by the criminal judicial system in India. This is a Section 354A of the IPC,1869 established the definition of sexual harassment and similar offences and also laid down the punishments for the same:

Section 354 A – This section states that acts like making unwanted physical contact, advances or other sexual gestures, or make a request for a sexual favour, or forcing a women to watch porn against her will, or making sexually coloured remarks all amount to sexual harassment.

Punishment: The violation of any of the above mentioned would result in imprisonment of up to three years and a fine

Section 354 B – this section established that forcefully undressing a woman or asking her to undress is punishable.

Punishment: This section states that if the above is violated it would result in imprisonment of three to seven year and a fine.

Section 354 C- this section talks about forcefully capturing or watching a women's picture without her consent.

Punishment – If there is only one conviction then that will result in imprisonment for three years, if there are more than one conviction then the punishment would be imprisonment for three to seven years and a fine.

Section 354 D – Physically following a woman and contacting her even when she said that she does not want to be contacted. Monitoring a woman's movements online or any other electronic communication. Simply put, stalking a woman is a punishable offence.

Punishment- In case there is only one conviction then there would be an imprisonment of up

to three years and a fine. If there is a conviction of one year or more then there would be an imprisonment of three to five years.

III. BRIEF ANALYSIS OF THE VISHAKA & ORS V. STATE OF RAJASHTAN AND ORS CASE AND THE VISHAKA GUIDELINES

Facts of the case:

Bhanwari Devi, a Dalit government employee, was working with a NGO that aimed at spreading awareness about hygiene and education of girls, and against child marriage and dowry etc.

As a part of her job, she was engaged with supporting a girl belonging to the Gujjar family who was forced to get married at a very young age. Bhanwari was successful, despite the several protests that rose with respect to this. However, Ramkant Gujjar a member of the Gujjar family decided to take revenge on her. He did this by gang raping her in front of her husband with five other men.

Bhanwari tried to file a case against these men, but she was not taken seriously by the policemen. It took her over fifty-two hours to get a complaint filed.

The Rajasthan High Court convicted these men for rape and passed a judgement which was not satisfactory. This led to a lot of public uproar as the public took to the streets in protest.

A group of non-profit organizations who aimed to protect the rights of women and to ensure safety of women filed a PIL in the SC seeking justice and requesting for an appropriate punishment for the rapists. The PIL was filed under the name of Vishaka and it aimed to fight for the rights of Bhanwari. They also aimed at forming a new set of guidelines for the protection of women at their workplaces.

Issue:

The SC highlighted the issue of gender discrimination and inequality, sexual harassment and other forms of violence against women.

Judgement:

A three bench Judge delivered the judgement with held that the fundamental rights provided under Article 14, Article 15, Article 19 (1)(g) and Article 21 of the Constitution were violated by these men.

The court Formulated the Vishaka Guidelines for the safety of women at their workplaces.

Features of the Vishaka Guidelines:

The following are the main aspects of the Vishaka guidelines laid down by the supreme court:

Definition of Sexual Harassment

It was defined as “*pronounced preventive, prohibitory and redress measures, and gave directives towards a legislative mandate to the guidelines proposed.*”

The Supreme Court also established all other things that account to sexual harassment they were -

- “1. Physical contact or advances.
- 2.A demand or request for sexual favours.
- 3.Sexually coloured remarks.
- 4.Showing pornography.
- 5.Any other unwelcome conduct whether it is physical, verbal or non-verbal.”

Providing a safer work environment for women

It is the responsibility of each and every employer to ensure that there is a safe working space for each and every employee. This may require taking steps towards safeguarding the interests of the female employees and towards ensuring that no women is victim to any form of sexual harassment. In case there is a case of sexual harassment then appropriate disciplinary measures are to be taken.

Employers duty to file a complaint.

The guidelines also established the duty of the employer to file a complaint if any conduct results to any form of sexual harassment that is a criminal offence under the IPC.

Complaint redressal committee

These guidelines make it compulsory for all companies to formulate a committee that deals with all the complaints that the employees have and take reasonable actions as a response to the complaints filed.

The employer must provide assistance to the employee in case she is sexually harassed.

It is the employer’s duty to provide any assistance that may be required to the victim of sexual harassment. In the case at hand Bhanwari Devi got absolutely no support from her employer. Instead, the employer denied all responsibilities.

Employers Duty to spread awareness.

It is the responsibility of the employers to create awareness with matters related to sexual harassment and safety of women at the workplace. This can be achieved by conducting workshops and other interactive sessions that will make the women aware of their rights.

Governments duty to widen the scope of the guidelines.

These guidelines also encourage the government to make necessary legislations to protect the rights of the women and to ensure that the private sector follows these guidelines. This would contribute to the growth of the women along with the nation.

IV. INITIATIVES TAKEN BY THE GOVERNMENT

The ministry of Women and Child development in the year 2017, launched the “Sexual Harassment Electronic Box” also known as the SHe-box. This was aimed at providing the women a facility to file a complaint online. Each of the complaints received were forwarded to an Internal committee. In 2019, it was told to the parliament by the government that there were only 612 complaints filed in 2 years. These complaints were mostly from the women who belonged to the private sector. The Ministry said that the women who complained were not satisfied with the steps taken by their companies.

In the year 2018, the Companies rule 2014, was amended, and it was made compulsory for all companies to implement the sexual harassment act in their annual reports, which have to be annually filed and registered.

After the #metoo movement, a group of ministries were formed by the government to review the POSH Act.

On a separate account, The National Commission for Women held region-wise consultations with, activists, lawyers, and retired judges to review the POSH Act to formulate recommendations to the Ministry of Women and Child Development. These consultations revealed that the law was not being adhered to even in government offices. The recommendations of the groups were taken and implemented.⁷

The POSH Act

The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and redressal) Act, 2013, also known as the POSH act, was passed by the Indian Parliament in 2013. It replaced the Vishaka Guidelines.

This Law elaborated on the definition of sexual harassment its scope, and to what extent it can be applied.

This act made it the employer's responsibility for ensuring that a safe working environment for women was created. The management was made responsible for ensuring that all the required steps towards the prevention of sexual harassment should be taken and also steps for redressal should also be taken.

In this act, sexual harassment is defined as

“sexual harassment includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.”

The act further describes quid pro quo with relation to sexual assault, which means a situation where an individual in authority asks a woman employee for sexual favours in exchange for job favours/advancement. The Act extends to both the organized and unorganized sectors, including the government, private and public sectors, throughout India.

V. CONCLUSION & RECOMMENDATION

Sexual Harassment is a grievous issue at the workplace. Even though there are laws and policies laid down, many victims do not get justice, and many victims don't even register complaints.

The landmark Vishaka Judgement gave birth to the Vishaka guidelines which established extremely comprehensive guidelines to safeguard the rights of the women at their workplaces. The POSH Act that replaced it was a comprehensive bill that based its laws on the Vishaka Guidelines.

Although there are elaborate laws for this issue it is necessary that these laws are implemented effectively too. For this the female employees have to be made aware of the law and provisions that they have. This can be done by conducting workshops and other sessions, that give the women opportunities to voice out their experiences and opinions.

Safeguarding the rights of women in all phases of life, so that they can grow and prosper is extremely important and it will not only help them come up but will also help our nation to reach greater heights.
