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# A Critical Analysis of Laws Relating to Safety of Women at Workplace

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## ABSTRACT

*It has been years since India regained her freedom and we made a promise to ourselves to reinstate India to its former glory and embarked upon a journey to become a developed nation. We resolved to promote among us fraternity assuring the dignity of the individual and unity and integrity of the nation. The fathers of our constitution bestowed upon every citizen of India, equal rights and opportunities, especial provisions were made regarding women, since they had been a neglected and undermined population of our country. We signed and adopted several International conventions aimed at alleviating the situation of women. Ideals like 'Democracy' and 'rule of law' were to be our guiding light. To a great extent, we have succeeded in our resolve. However, frequent acts of persecution towards half of our population i.e. women, casts a serious doubt upon the credibility of the claim. Over the years, cases of sexual harassment of women at workplaces have increased drastically. These harassments are nothing but a violation of the rights of women as enshrined under Articles- 14, 15, 19 (1) (g) and 21 of the Constitution of India.*

*The Supreme Court in Vishakha & Others v. State of Rajasthan & Others gave certain elaborate guidelines to be followed by the employer to ensure the safety of women employees. These guidelines, though promising, were devoid of any legal backing and filled with certain technical loopholes. It was long afterwards in 2013 that "The Sexual Harassment of Women at Workplaces (Prevention, Prohibition and Redressal) Act, 2013 was passed by the Indian Parliament.*

*The following research aims to analyse the prevalence of cases of sexual harassment and the technical flaws and effect of the enactments aimed to curb it. It follows the doctrinal mode of study and uses a variety of qualitative and quantitative data for purpose of analysis.*

## I. INTRODUCTION

Since the days of yore, women have been subjected to various kinds of humiliations, harassments and discriminations in every part of the world, in every civilization. India, being

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no exception to it, also has a history of treating women as second class citizens, devoid of many primary rights .One of the most gruesome and worst form of crime against women alarmingly prevalent in our society is the crime of sexual harassment of women done or perpetrated by men in various capacities.

In the modern market economy, ever since the end of world wars, the concept of a working woman has evolved in which women do all kinds of works in various capacities, comprising of a huge working population, contributing immensely in our nation's economy. Apart from their economic importance, even the constitution of India provides them with various fundamental of equality, freedom to work and live with dignity. But these fundamental of women are glaringly challenged by the heinous act of sexual harassment of women especially in their workplaces. These harassments may be done by their bosses, clients, colleagues and in some cases, even teachers.

It has been observed in most of such cases that it is the men in authoritative positions who sexually harass their female junior employees since they consider themselves of having some imaginary "right" over their female juniors and they are plagued by the dogmatic thinking that any woman who comes out of her traditional role to work and earn must necessarily be a woman of loose/easy virtue and are easily approachable for immoral purposes.

They often make unethical, immoral advances, make use of threat at times or give them a greed for money or promotion. In several cases they even try to force themselves on the unwilling woman by several coercive methods.

This whole experience is unimaginably traumatizing for such a woman and may even force her to take up extreme steps like suicide. These above mentioned incidences often discourage parents from sending their female children to work in offices numerically dominated by males, fearing the compromise of the safety of their child at the hands of men whom they consider as potential harasser. This becomes a prime reason for mass female unemployment in our nation, thus hampering its economic advancement and development.

Although thousands of incidents of sexual harassment of women happen in India, on an annual basis, among which only a handful are reported by the victim, the most noticeable among them is the infamous Bhanwari Devi Incident, where a woman was gang raped by a group of men because she tried to stop a child marriage (as part of her work as a saathin) occurring within the clan of those men. In this case the security and safety of this woman was compromised on account of her work. After a series of mass protest and an FIR lodged by an NGO named Vishaka, the Supreme Court took note of the incident and gave certain

guidelines for protection of women at their workplace at their workplace, famously known as the Vishaka guidelines.

These guidelines were aimed at providing woman with safe and healthy environment at her workplace. Supreme Court has also observed in this case that such sexual harassments are paramount violation of human rights. These guidelines are both binding and to be mandatorily followed at all workplaces whether it comes under public sector or private sector. It aims to make the employer of the workplace obligated to provide safe environment to the women working in his workplace.

Although the Vishaka guidelines have helped to create awareness among both men and women in all sectors of economy and has also successfully dealt with the cases of violation of guidelines with the aid of a complaint mechanism, but the situation of women is far from satisfactory given too various legal and technical loopholes in the guidelines and to the stubborn and dogmatic thinking of the patriarchal society.

The parliament has, in the wake of the various incidents and direction given by the Supreme Court passed the *Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013* which provides necessary legal backing to the guidelines. The Act, in force for many years now, has proven to be much efficient in curbing the malice of sexual harassment at workplace and has a long way to go.

## II. VISHAKHA CASE - AN OVERVIEW

There is a sick tradition of child marriage prevalent in most rural parts of Rajasthan. Bhanwari Devi was a rural area based social worker/ Saathin in a scheme run and funded by the government of Rajasthan. She fought against this tradition of child marriage as well as other prevalent malpractices.

In her official capacity, she tried to prevent the marriage of an infant 2 years old child of a local man named Ramkaran Gujjar, she took the aid of the local authorities for this purpose. She was socially boycotted by Gujjars in particulars and whole society in general. Since she was meddling with religious affairs of the society. On September 1992, five men, including Ramkaran Gujjar gang raped Bhanwari Devi in front of her husband, while they were ploughing their fields, as a part of the grudge they held against Bhanwari Devi.

Both Bhanwari Devi and her husband, apart from already existing social boycott, also had to face social humiliation. The doctor of the primary health centre refused to examine her and same was the case with the doctor Jaipur, who only noted down her age and did not mention

anything about rape.

Both Bhanwari Devi and her husband were taunted by policemen and lady officers and their plea to be granted police protection was also turned down by them. The trial court due to lack of any evidences acquitted the accused person. Despite such a setback, Bhanwari Devi was determined to fight the system and she launched pan India campaign which included women's rights activists and Saathins at a large scale.

On an appeal to trial court's decision, the High court held that it was a case of "rape which was committed out of vengeance".

The campaign that was started by Bhanwari Devi resulted into filing of a petition in the Supreme court under the name of *Vishaka v. State of Rajasthan*<sup>2</sup> Seeking certain guidelines and directions to prevent sexual harassment faced by women at their workplace. As a result, the Supreme Court gave its judgement famously known as the Vishaka guidelines.

### III. VISHAKA GUIDELINES & OBSERVATIONS OF THE SUPREME COURT OF INDIA

In view of a multitude of Articles under the Indian Constitution as well as International Conventions and norms, and in the absence of an enacted law to provide for the enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, the Supreme Court in exercise of its power under Article 32 of the Constitution of India, laid down in *Vishaka and others v. State of Rajasthan and others*,<sup>3</sup> a set of guidelines for due observance at all workplaces or other institutions, until a suitable legislation was enacted to occupy the field. The court further emphasised that the prescribed guidelines and norms should be treated as the law declared by the Supreme Court under Article 141 of the Constitution of India. The court declared it necessary and expedient on the part of every employer and responsible person or institutions to strictly observe the following guidelines:

1. Duty. —A duty is casted upon the employer and other responsible persons at the workplaces to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.
2. Definition of "Sexual Harassment".—This is, perhaps, the most important part of the guidelines as proved by the fact that it was incorporated verbatim in defining section of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)*

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<sup>2</sup> AIR 1997 SC 3011.

<sup>3</sup>AIR 1997 SC 3011.

*Act, 2013*<sup>4</sup> The court defined this evil as under:

“Such welcome sexually determined behaviour (whether directly or by implication) as:

- a) Physical contact and advances;
  - b) A demand or request for sexual favours;
  - c) Sexually coloured remarks;
  - d) Showing pornography;
  - e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
3. Preventive Steps. —All employers or persons in charge of work place (whether in public or private sector) should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
- a) Express prohibition of sexual harassment at the work place should be notified, published and circulated in appropriate ways.<sup>5</sup>
  - b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules.
  - c) As regards private employers, steps should be taken to incorporate the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
  - d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.<sup>6</sup>
4. Criminal Proceedings. — It is further provided that in case any conduct amounting to sexual harassment also amounts to an offence under the Indian Penal Code, 1860 or under any law, the employer must initiate appropriate action by making a complaint with the appropriate authority.<sup>7</sup>

The employer while dealing with the complaints of sexual harassment should take steps to prevent the victims and witnesses from being discriminated against or victimised. The victims should also have the option to seek transfer either of oneself or the perpetrator.

5. Disciplinary Action. — If the alleged conduct amounts to misconduct defined under the

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<sup>4</sup>S. 2(n)

<sup>5</sup>Incorporated in S. 19, The Sexual Harassment of Women at Workplace Act, 2013

<sup>6</sup> Ibid. S. 3 (2)

<sup>7</sup>Ibid. S. 19 (h)

relevant service rules, the employer shall initiate appropriate disciplinary action.<sup>8</sup>

6. Complaint Mechanism. —Guideline nos. 6 and 7 provide for the constitution of a Complaints Committee. The Complaints Committee should be headed by a woman<sup>9</sup> and not less than half of its member should be women<sup>10</sup>. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Supreme Court went a step ahead and held that an attempt to molest will also amount to Sexual Harassment. Outrageous behaviour of the employee is sufficient to constitute Sexual Harassment and the fact actual assault or touch is irrelevant.<sup>11</sup>

In a leading case, the accused, A.K. Chopra, was charged with sexually harassing a woman employee working as a clerk cum typist. The aggrieved had complained that the accused had tried to physically molest her in the office and also tried to sit too close to her and touch her inappropriately. Despite repeated protests, he continued repeating his unwelcome overtures. The aggrieved complained to her employers about the behaviour of her superior. Following the complaint, the alleged was suspended and disciplinary proceedings were initiated against him wherein he was found guilty and subsequently removed from service.

Aggrieved by the above order A.K. Chopra, then, approached the High Court praying that the impugned order be quashed. The High Court concluded that the accused 'only made an attempt to molest' the clerk without actually doing so and that's why, he could not be removed.

In appeal, criticising the judgment of the High Court, the Apex Court held that the High Court erred while deciding in favour of the accused and that the Court should not interfere in the findings of the disciplinary proceedings unless:

- (a) the findings were based on no evidence; or
- (b) the findings were legally untenable.

Supreme Court held that the conduct of the accused did not cease to be outrageous for the want of actual assault or touch. It emphasised that "in cases of Sexual Harassment, the courts should examine broader possibilities and must not be influenced by trivial discrepancies or

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<sup>8</sup>Ibid. S. 19 (i)

<sup>9</sup> Ibid. S. 4 (2) (a)

<sup>10</sup>Proviso to S. S. 4 (2)

<sup>11</sup> Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625.

narrow technicalities”<sup>12</sup>.

#### **IV. RELEVANCE OF VISHAKA GUIDELINES FROM ECONOMIC AND SOCIAL POINT OF VIEW**

In this era of globalization and acceptance of market economy by almost all nation states (including India) the role of women in our economy has increased dramatically, constituting at least half of our workforce.

The major issue that women have to face in their workplace is, as has been already mentioned, is the sexual harassment by their male employers and co employees. This grave violation of human rights has been up to a huge extent by the Vishaka guidelines formulated by the Supreme Court. The most noteworthy aspect of these guidelines is that it provides for establishment of a Complaints Committee at the workplace which will comprise of more than 50% of women and that it aims to make the employer responsible and answerable for any violation of the guidelines. This has made the workplaces far safer and healthier for women than they used to be.

Guidelines has made it mandatory for every workplace whether public or private to constitute a complaints committee. In case of failure to do so, the workplace’s owner has to pay hefty fine.

This committee is a redressal mechanism which can be easily approached by the woman who faces any incident of sexual harassment. The Vishaka guidelines have a huge deterrence effect upon the harasser by the virtue of the fact that it may cause a huge damage to him, costing him a loss of reputation, economic resources, his job and in some cases even the very license to practice that particular profession. Due to the efficiency of these guidelines in curbing the harassment of women at workplace whether in private enterprise or public enterprise, the workplace has actually become more safe, humane and healthy for the woman to work, thus it enhances the working capacity of our population, directly benefitting our economy.

Also, the earlier unwilling parents of the women are now willing to send their daughters to work and earn, given to the safe working conditions they will be provided there on account of such guidelines.

Thus, this ameliorates the financial condition of the women in the society which, in turn reduces her dependence on any male member of her household and makes her independent in

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<sup>12</sup>Ibid. at para 28

real sense.

## **V. OTHER LEADING CASES RELATED TO SEXUAL HARASSMENT AT WORKPLACE.**

### 1.) Rupan Deol Bajaj v. Kanwar Pal Singh Gill<sup>13</sup>

It's a leading case of outraging the modesty of women at workplace. In presence of a gentry, a topmost state police officer, Mr KPS Gill patted the posterior region of one senior IAS officer known as Rupan Deol Bajaj. She raised objections to his indecent and inappropriate behaviour instantly but Mr Gill nevertheless continued with his crude and indecent behaviour. The court was of the opinion that the instance was a serious violation of modesty of Mrs Bajaj, since she was a woman of ordinary sense and temper and the ignominy and trauma suffered by Mrs Bajaj must have been so slight that she had to drag Mr Gill to the court, which she, otherwise would not have complained about.

The High court of Punjab and Haryana held KPS Gill to be guilty under section 354 (outraging the modesty of a woman)<sup>14</sup> and Section 504 (words, gestures or act intended to insult a lady)<sup>15</sup>

In the year 2005 the Supreme Court also upheld High court's decision. It ordered a monetary compensation of ₹ 2, 00, 000 to be given to Mrs Rupan Deol Bajaj by Mr. K.P.S. Gill and reduced his sentence to probation. Since Mrs Bajaj refused to take the money, the Supreme Court ordered the money to be donated to women organisation. This leading case has a very important place in the legal world and is regarded as a benchmark case of harassment at workplace.

### 2.) Rina Mukherjee v. Statesman<sup>16</sup>

In this leading case of sexual harassment of a woman at workplace, one Rina Mukherjee was a senior Reporter in the statesman in Kolkata. She had several years of experience in the field of journalism, by virtue of working on several positions in various reputed news channels and newspapers. After a few days of working in the statesman, her senior Ishan Joshi began sexually harassing her. He would often touch her inappropriately, put his arms around her, call her in his office and paw her. Since he was a very senior official, Mrs. Rina kept quiet for a long time, which gave more confidence to Mr Ishan to harass her, his harassment activities increased up to an obnoxious level, often publicly or in company meetings.

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<sup>13</sup> 1995 SCC (6) 194

<sup>14</sup>S. 354, Indian Penal Code, 1860.

<sup>15</sup>S. 504, Indian Penal Code 1860.

<sup>16</sup> Rina Mukherjee v. Statesman 2014 (4) CALLT 190 (HC); 2014 (143) FLR 51

Mrs Rina, unable to bear it, complained. But since there was no implementation of the Vishaka guidelines in the company, she found it very hard to proceed with her complaint. She was suddenly after the complaint asked to leave her job by the office authorities, since her job was terminated by the statesman.

The Industrial tribunal found her dismissal to be “non- bona fide” and without any valid reason. The Calcutta High Court also upheld the tribunal’s decision and directed the statesman to pay her salary from backdate and to also pay her a fine of ₹ 1, 00, 000 to Mrs Rina within a period of 3 weeks.

There are several legal and technical flaws that occur in Vishaka guidelines, as have been from time to time pointed out by various legal experts.

- 1.) The guidelines talk about / considers only those allegations of sexual harassments which have occurred “within the campus only”. It ignores cases that may occur outside the campus even though parties to the incident are from same office / place of work.
- 2.) There has been no mention about the “fund provisions” necessary for the guidelines to be followed properly , in totality.
- 3.) The committee that will be formed under this guidelines will only have recommendatory power. The final decision will be given only by the office authorities. Thus, the decision of such committees are devoid of any kind of binding powers.
- 4.) Although there’s provision for a time bound decision by such committee, yet it is seldom given.
- 5.) Guideline has the provision of filing complaint through a proper administrative channel, but the term “proper administration channel” has nowhere been defined.
- 6.) The “government department” where the annual reports are to be given is very vague.

## **VI. AN ANALYSIS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PROHIBITION, PREVENTION, AND REDRESSAL)**

Before 1997 there was a dearth of effective civil as well as criminal laws in India to provide efficacious protection to women from sexual harassment at workplaces. Earlier, an aggrieved woman had to lodge a complaint *u/s. 354, IPC* (Assault or criminal force to woman with intent to outrage her modesty) and *u/s. 509, IPC* (Word, gesture or act intended to insult the modesty of a woman). The position was ambiguous leaving the interpretation of ‘outraging

*the modesty of woman*' to the discretion of the police officer.<sup>17</sup> This position, however, has changed with the Criminal Law Amendment Act, 2013 which inserted the new Section 354-A thereby making Sexual Harassment an expressed offence which is punishable with rigorous imprisonment for a term extending to 3 years, or with fine, or with both.

In 1997, the landmark decision of the Apex court in *Vishaka v State of Rajasthan*,<sup>18</sup> laid the foundation of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. The aforesaid Act received the President's assent on 22<sup>nd</sup> April, 2013 and came in force on 9<sup>th</sup> December, 2013 after a long gap of 14 years of the *Vishaka*<sup>19</sup> Judgement.

The Act signifies the nation's commitment to various international accords and also to the constitutional promise of Right to live with dignity enshrined in Article 21.<sup>20</sup> A rough perusal of the preamble to the Act at the outset clarifies that its purpose is not only to curb sexual harassment at workplace but also the redressal of complaints thereof. The preamble also takes note of the fact that this menace is violative of her Right to equality<sup>21</sup> and Right to life<sup>22</sup> i.e., to live with dignity. It creates an insecure and hostile working environment that discourages the participation of women in work; ergo, adversely affects their economic empowerment and the objective of inclusive growth.<sup>23</sup> Another front on which the Rights of working women are violated is the internationally recognised human rights by various international conventions like CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) which was ratified by the Government of India on 25<sup>th</sup> June 1993. Article 11 of the Convention require the States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights and declares the Right to work as an inalienable right of all human beings.

The Act provides, *inter alia*, for various provisions in order to establish a safe and sound work environment for women. The Act makes stringent provisions to ensure this e.g. every offence under this Act shall be a cognizable offence.<sup>24</sup> The other noteworthy provisions are:

The Act says the following unwelcome acts and behavior can (directly or by implication)

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<sup>17</sup>*Urban Women in Contemporary India: A reader*, 110 (Rehana Ghadially, 1<sup>st</sup> ed., 2007)

<sup>18</sup>AIR 1997 SC 3011

<sup>19</sup> Ibid.

<sup>20</sup>Art. 21, the Constitution of India

<sup>21</sup>Art. 14, the Constitution of India

<sup>22</sup>Art. 21, the Constitution of India

<sup>23</sup><http://pib.nic.in/newsite/erelease.aspx?relid=92690> visited on 12.01.2019

<sup>24</sup>S. 27(3), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

constitute sexual harassment:<sup>25</sup>

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

Further, every employer is bound to constitute an Internal Complaints Committee.<sup>26</sup> The Committee shall constitute of nominated members by the employer provided that at least one half of them should be women.<sup>27</sup> The Presiding Officer who shall be a women employed at a senior level at workplace and not less than two other member shall be nominated from amongst the employees.<sup>28</sup> One member shall be nominated amongst NGOs or associations committed to the cause of women.

If the employer fails to comply with his duties under Ss. 4 (1), 13, 14 and 22 and contravenes or abets contravention of other provisions of this Act or any rules made there under, he shall be punishable with fine which may extend to fifty thousand rupees.<sup>29</sup> Also, if any employer, previously convicted of an offence under this Act, subsequently commits and convicted of the same offence, he shall be liable to twice the punishment which might have been imposed on the first conviction and cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration by the Government or local authority required for carrying on his business or activity.<sup>30</sup>

## VII. CONCLUSION AND SUGGESTION

There can be no logical denying of the fact that sexual harassment of women at their workplace is an atrocious and grave violation of basic human right of dignity and any reported incident should be treated very seriously by the authorities of that workplace. Before 1997, women didn't have a lot of options to deal with the menace of sexual harassment and they had to suffer for long to muster up courage to report the violation. After Vishaka guidelines came into the picture, the situation of working women changed. They got the much needed legal provision to protect themselves at their workplaces.

Although the guideline, which has later been given the form of an Act ( Sexual Harassment

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<sup>25</sup> Ibid., S. 2(n)

<sup>26</sup> Ibid., S. 4 (1)

<sup>27</sup> Proviso to S. 4 (2)

<sup>28</sup> Ibid., S. 4 (2) (a) & (b)

<sup>29</sup> Ibid., S. 26 (1)

<sup>30</sup> Ibid., S. 26 (2)

of Women At Workplace (Prevention ,Prohibition Redressal) Act 2013, is very much efficient in curbing the instances of sexual harassment by themselves , it needs filling up of various legal loopholes to make it more efficient in curbing and punishing the instances of sexual harassment . There are several other measures to prevent the menace of sexual harassment like several awareness campaigns must be organised by the media regarding this issue, The working of complaints committees must be made more efficient through proper and regular funds, Fast track court system must be introduced for this specific purpose of dealing with such sexual harassment cases, The laws for anonymity of the victim must be made more stringent by enhancing the punishment for its violation. This will encourage women to complaint without any fears for their job or reputation. The use of internal committee in deciding these cases must be avoided since if the harasser is a person at an important position, he may influence the decision of the internal committee. An external committee, comprising of lawyers and members of NGOs for Women Issues must be preferred. Also, in cases where the woman doesn't have enough resources to fight for her rights in the court, she must be readily provided with subsequent resources. Thus, the Supreme Court in Vishaka case has provided very elaborate guidelines, which has later been given the form of an act which has in its present form empowered a lots of working women making them feel more confident and safe at their workplaces and upholds their fundamental human rights.

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