

**INDIAN'S LAW ON PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE****Prativa Panda, Ph.D.***Reader, University Law College, Utkal University. BBSR-4 ODISHA***Abstract**

In India sexual harassment at workplace is one of the most common crimes against women. Equality before the law and equal protection of law between males and females is the Constitutional guaranty on the strength of which several legal provisions are present in the Indian Penal Code (IPC). Some special legislation has also been enacted from time to time for the prevention and control of sexual exploitation of women. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is one of them. The Act explains what all can tantamount to sexual harassment and how workplaces need to be proactive ensuring the rights of a woman. This paper is an attempt to explain lucidly the periphery of the Act and how organizations should act upon in protecting and preserving the dignity of a woman.

Keywords: *sexual Harassment, sexual harassment at workplace, act on sexual harassment, sexual harassment act India*



[Scholarly Research Journal's](http://www.srjis.com) is licensed Based on a work at www.srjis.com

Introduction:

Sexual harassment is considered as a violation of a woman's fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. The Constitution

also provides every citizen the 'right to practice or carry out any occupation, trade or business, which includes the right to a safe environment, free from all forms of harassment'ⁱ.

Meaning and definition of Sexual Harassment:

In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, the object *sexual harassment of working women* was named and definedⁱⁱ.

Unwelcome sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment. There are no related laws in the Indian Penal Code that may be evoked when a woman is sexually harassed. There are three sections in Indian Penal Code (509, 294 and 354) to deal with such crimes but there is no specific law which deals with the crime in its entirety. However, these related laws are framed as offences that either amount to *obscenity* in public or acts that are seen to violate the *modesty of women* under Sections 294, 354 and 509 of the IPC. While Section 294 IPC is a law applicable to both men and women, the latter two are specifically oriented towards women.

Prosecution for sexual harassment:

While prosecuting an accused for sexual harassment it must be proved that:

1. the accused intentionally did some act, recited some song, uttered some words or made some gesture;
2. that such act, singing, reciting or gesture was obscene;
3. that it was done at a public place. In *Rameshwar v. State of Haryana*,ⁱⁱⁱ the accused caught hold of a married woman and tried to open the string of her salwar with a view of committing rape on her but being hit by the woman with a Kuthari he fled away. The Court held the accused guilty under Section 354 and not under Section 376 of Indian Penal Code.
4. Proving the Guilty: - Indian Penal Code provides 3 sections for prosecution for the offence of sexual harassment.

Sexual harassment is nothing less than the showcasing of male dominance given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. However, it is also not true that all cases of sexual harassments are such- where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault.

The question is not whether women have the right to bodily integrity, as this right is already adumbrated under Article 21 of the Constitution of India. Article.21, which guarantees the right to life and liberty to men and women both alike- but whether it is really imperative to take a decisive step towards extirpating this evil and make the contemporary and future society a safe haven for women.

In Rupan Deol Bajaj v. K.P.S.Gill,^{iv} a senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab- Mr. K. P. S.Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter. The Supreme Court in January, 1998 fined Mr. K. P. S.Gill Rs.2.5 lacs in lieu of three months Rigorous Imprisonment under Sections 294 and 509 of the Indian Penal Code.

The mechanism for dealing with sexual harassment was first spelt out in 1997 in the so-called Vishakha Guidelines. It was first in case of *Vishakha and Others vs. State of Rajasthan and Others*, that Supreme Court declared sexual harassment at workplace to be unconstitutional. It was in the ruling for the first time, sexual harassment at workplace recognized as a violation of human rights. The Supreme Court laid out the guidelines making it mandatory for the employer to provide for a mechanism on gender equality. Sexual harassment is considered to be violation of Article 14, 15, 19(1)(g) and 21 of the Constitution.

It was in 1997 *Vishaka vs. State of Rajasthan and others,*^v for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly as:

- 1 Sexually coloured remarks
2. Physical contact and advances
3. Showing pornography
4. A demand or request for sexual favors
5. Any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

It was in this landmark case that the sexual harassment was identified as a separate illegal behavior. The critical factor in sexual harassment is the unwelcomeness of the behaviour. There by making the impact of such actions on the recipient more relevant rather than intent of the perpetrator- which is to be considered.

In the abovementioned case, the judgment was delivered by J.S.Verma. CJ, on behalf of SujataManohar and B.N. Kirpal, JJ., on a writ petition filed by 'Vishakha' - a Non-Governmental Organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article 21 of the Constitution.

The immediate cause for filing the petition was the alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines:

1. All the employers in charge of work place whether in the public or the private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation; he should take the following steps:
 - a. Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favour, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal/ non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
 - b. The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
 - c. As regards private employers, steps should be taken to include 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, hygiene- to further ensure that there is no hostile environment towards women and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
2. Where such conduct amounts to specific offences under the Indian Penal Code or any other law the employer shall initiate appropriate action in accordance with the law, by making a complaint with the appropriate authority.
3. Victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

As stated by the Supreme Court, these guidelines are applicable to:

- a. The employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints.
- b. Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity- in the government, private or organized sector come under the purview of these guidelines.

Preventive Steps:

1. Express prohibition of sexual harassment should be notified and circulated.
2. Inclusion of prohibition of sexual harassment in the rules and regulations of government and public sector.
3. Inclusion of prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 by the private employers.
4. Provision should be made for appropriate work conditions for women.

Procedure pertaining to filing of complaints:

1. Employers must provide a Complaints Committee which is to be headed by a woman; of which half members should be women.
2. Complaints Committee should also include an NGO or other organization- which is familiar with sexual harassment.
3. Complaints procedure should be time bound.
4. Confidentiality of the complaints procedure has to be maintained.
5. Complainant or witnesses should not be victimized or discriminated against- while dealing with complaints.
6. The Committee should make an annual report to the concerned Government department and also inform of the action (if any) taken so far by them.

Miscellaneous Provisions:

1. Guidelines should be prominently notified to create awareness as regards the rights of the female employees.
2. The employers should assist the persons affected, in cases of sexual harassment by outsiders or third parties.
3. Sexual harassment should be discussed at worker's meetings, employer-employee meetings and at other appropriate forums.

4. Both Central and State governments are required to adopt measures including legislations to insure that private employers also observe these guidelines.

Apparel Export Promotion Council v. A.K. Chopra,^{vi} in this case, is the first case in which the Supreme Court applied the law laid down in Vishaka's case and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article 21 of the Constitution.

In both cases the Supreme Court observed, that " In cases involving Human Rights, the Courts must be alive to the International Conventions and Instruments as far as possible to give effect to the principles contained therein- such as the Convention on the Eradication of All forms of Discrimination Against Women, 1979 [CEDAW] and the Beijing Declaration directing all state parties to take appropriate measures to prevent such discrimination.

The guidelines and judgments have identified sexual harassment as a question of power exerted by the perpetrator on the victim. Therefore sexual harassment in addition to being a violation of the right to safe working conditions is also a violation of the right to bodily integrity of the woman.

In **MedhaKotwalLele and others vs. Union of India and others**,^{vii} taking note of the non-implementation of guide line given by the Supreme Court in **Vishaka v. State of Rajasthan**,^{viii} in respect of sexual harassment cases, the Apex Court issued directions that the complaint committees constituted in accordance with the Vishaka will be deemed to be an inquiry authority for the purposes of Central Civil Services (conduct) rules, 1964 and the report of the complaints committee shall be deemed to be an inquiry report under these rules. And the disciplinary authority will act in accordance with the rules on the basis of the findings of such report and act promptly.

India finally enacted its law on prevention of **sexual harassment** against female employees at the **workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** ("Sexual Harassment Act") has been made effective on April 23, 2013 by way of publication in the Gazette of India.

The statute has been enacted almost 16 years after the Supreme Court of India, in its landmark judgment in Vishaka and others v. State of Rajasthan ("**Vishaka Judgment**")^{ix} laid down guidelines making it mandatory for every employer to provide a mechanism to redress

grievances pertaining to **workplace sexual harassment** and enforce the right to gender equality of working women (“**Guidelines**”). Codification of the requirements is a much-awaited development and is a significant step towards creating awareness **on** the issue of **workplace sexual harassment** and ensuring women a safe and healthy work environment.

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** has been enacted with the objective of providing women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment. The definition of sexual harassment in the **Sexual Harassment Act** is in line with the Supreme Court’s definition in the Vishaka Judgment

Salient features of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

Scope:

The ambit of the Sexual Harassment Act is very wide and is applicable to the organized sector as well as the unorganized sector. In view of the wide definition of ‘workplace’, the Statute, inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying on commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals. As per the Sexual Harassment Act, a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment - including transportation provided by the employer for the purpose of commuting to and from the place of employment.

The definition of ‘employee’ under the Sexual Harassment Act is fairly wide and covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labour, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

• **Internal Complaints Committee and Local Complaints Committee :**

The Sexual Harassment Act requires an employer to set up an ‘Internal Complaints Committee’ (“ICC”) at each office or branch, of an organization employing at least 10 employees. The government is in turn required to set up a ‘Local Complaints Committees’ (“LCC”) at the district level to investigate complaints regarding sexual harassment from establishments where the ICC

has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The Sexual Harassment Act also sets out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

- **Interim Reliefs :**

The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

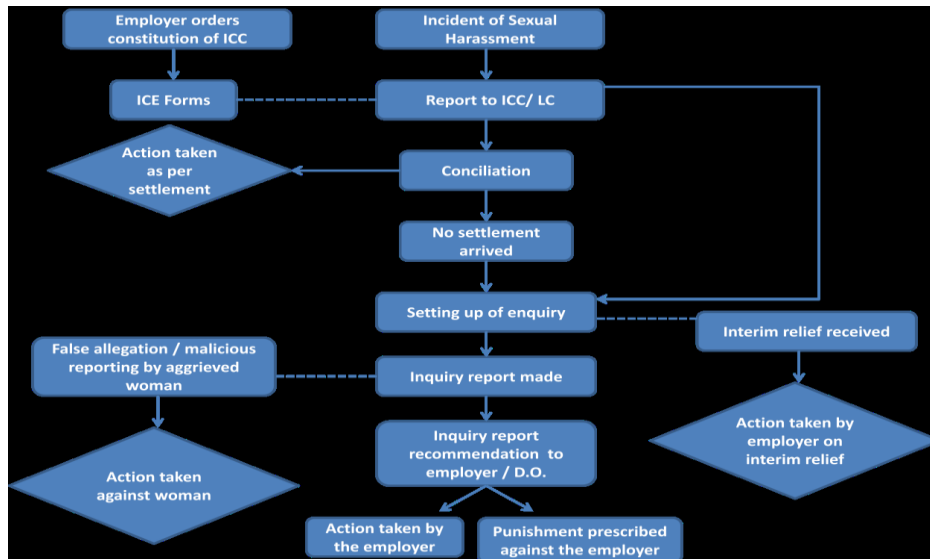
- **Process for Complaint and Inquiry :**

Please refer to the following flowchart which provides, **in** brief, the process to be followed by the aggrieved employee to make the complaint and by the employer to inquire into the complaint. The law allows female employees to request for conciliation **in** order to settle the matter although a monetary settlement should not be made as a basis of conciliation.

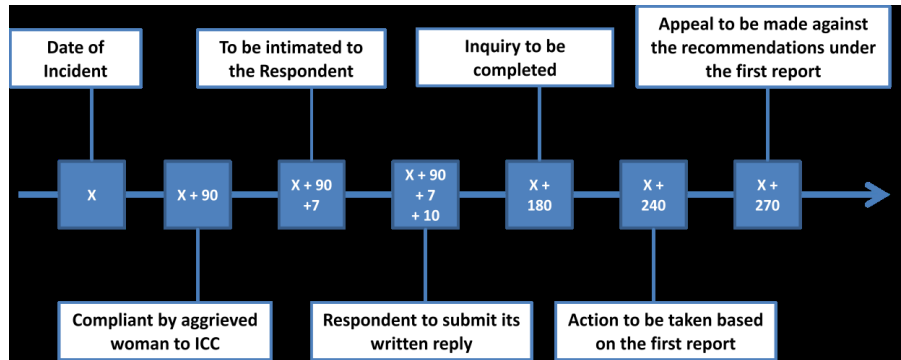
- **Action against Frivolous Complaints :**

So as to ensure that the protections contemplated under the Sexual Harassment Act do not get misused, provisions for action against “false or malicious” complainants have been made.

Process in which the redressal mechanism works^x.



The figure below shows the timeline for the redressal process.



Employer's Obligations

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter alia,

- i. provide a safe working environment
- ii. display conspicuously at the workplace, the penal consequences of indulging **in** acts that may constitute sexual harassment and the composition of the Internal Complaints Committee
- iii. organise workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee
- iv. treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.

The employer is also required to monitor the timely submission of reports by the ICC.

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the **Sexual Harassment** Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result **in** the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

Criminal Law Amendment Act 2013:

The Criminal Law Amendment Act, 2013 inserted of a new section as 354A for Sexual harassment and punishment for sexual harassment by amending section 354 of IPC in April 2013.

Section 354A:

(1) The following acts or behaviour shall constitute the offence of sexual harassment—

- I. physical contact and advances involving unwelcome and explicit sexual overtures; or
- II. a demand or request for sexual favours; or
- III. a making sexually coloured remarks; or
- IV. forcibly showing pornography; or
- V. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may **extend to five years**, or with fine, or with both.

(3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend **to one year, or with fine**, or with both.

End Notes:

ⁱ Article 19(1)(g) of the Constitution.

ⁱⁱ *Vishakha and anrsv. Union of India*, AIR 1997 SC 3011

ⁱⁱⁱ AIR 1952 SC 54

^{iv} 1995-(6)SCC0194

^v A.I.R 1997 SC3011

^{vi} A.I.R 1999 SC 625

^{vii} 2004 (5) SCALE 573

^{viii} AIR 1997 S.C. 3011

^{ix} A.I.R 1997 SC3011

^{ix} SSRN id no2498990

Reference:

G.B.Reddy. *Women and the Law*, Gogia Law Agency.(2000)

K.D.Gour. *Text Book on the Indian Penal Code*, 4th Edition, Universal Law Publication.(2008)

Kalpna Roy. *Women's Oppression and Protective Laws* Rajat Publication,(1999)

Leena Gonsalves, *Sexual Harassment at Workplace*, 12 (5) *Legal News and Views* (1998)

Maya Majumdar, Protecting our Women Dominant Publishers and Distributors. Volume I, II and II, (2001)

S.N. Mishra, Indian Penal Code, 16th Edition, Central Law Publication

Paras Dewan, Constitutional Law of India, 2012

www.icrw.org

www.indiatimes.com

www.law-lib.utoronto.ca

www.mwcd.com

www.un.org/womenwatch

www.whrmet.org

ww.womenasia.com/iwraw