

THE LAW ON WORKPLACE SEXUAL HARASSMENT IN INDIA EVOLUTION, INSTITUTIONS, AND GAPS

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ABSTRACT: The history of India's workplace sexual harassment laws is the primary focus of this article, which is the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. It underscores the law's constitutional foundations, judicial progress, and legislative recognition. The institutional structures of the Act, including Local Committees and Internal Committees, are evaluated for their capacity to prevent and manage workplace sexual harassment. Implementation concerns in the study include inadequate compliance, low knowledge, ineffective enforcement, poor compliance, underreporting of grievances, and procedural errors. This research reveals that in order to establish gender-neutral, secure, and welcoming workplaces, it is necessary to increase institutional accountability, enhance implementation, and enhance the legal system.

Keywords: *Workplace Sexual Harassment, POSH Act, 2013, Gender Equality, Internal Committee, Local Committee, Constitutional Rights, Institutional Framework, Implementation Gaps, Women's Rights, Workplace Safety.*

1. INTRODUCTION

The constitutional guarantees of autonomy, equality, and dignity are undermined by sexual harassment in the workplace, which constitutes a violation of human rights. These attributes increase the likelihood of workplace injuries for women, which in turn diminishes their productivity, involvement, and opportunities for advancement. In India, workplace sexual harassment has transitioned from an infrequent occurrence to a pervasive form of gender discrimination. Sexual harassment is a legal and constitutional concern. The legal framework, which is indicative of the increasing dedication to safe and equitable workplaces, was established through the integration of constitutional principles, international obligations, judicial engagement, and legislative initiatives. The judicial system was influenced by each of these factors.

India's sexual harassment legislation has evolved over time as a result of judicial activism and international human rights standards. Before specific regulations were implemented, there was no comprehensive framework for addressing workplace sexual harassment. In *Vishaka v. State of Rajasthan* (1997), the Supreme Court of the United States determined that sexual harassment is a violation of Articles 14, 15, 19, and 21. This determination was implemented in order to eliminate this legal vulnerability. Institutional accountability was established by the Court prior to the 2013 Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) act. This was accomplished through the Vishaka Guidelines, which were established in accordance with the Convention on the Elimination of All Forms of Discrimination Against Women.

Despite the establishment of Internal and Local Committees for prevention and rehabilitation and the Act of 2013, there are still significant implementation issues that impede the establishment of a harassment-free workplace. Victims are prevented from reporting incidents due to a lack of understanding, inadequate procedures, fear of punishment, social shame, and institutional incapacity, and many organizations fail to establish committees as mandated by law. Furthermore, victims are advised to refrain from reporting incidents. The gap between lawful promises and actual implementation is demonstrated by the ongoing existence of these operational and structural flaws. The effectiveness of India's legal framework in combating workplace sexual harassment and identifying areas for significant institutional and legal reform necessitate an examination of its development, institutional framework, and implementation shortcomings.

Background of the Case

In 1997, *Vishakha v. State of Rajasthan* was the outcome of the gang rape of Bhanwari Devi, a social worker working in Rajasthan. In India, citizens who were concerned with gender equality in the workplace petitioned the Supreme Court to enact a law. Therefore, this was implemented, as Indian law did not prohibit workplace sexual harassment. This case proposes a legislative framework that will promptly safeguard the dignity of women in the workplace.

Constitutional Basis of the Judgment

The Supreme Court has determined that workplace sexual harassment is a violation of Articles 14, 15, 19(1)(g), and 21 of the Constitution. It recognized that women are entitled to equality with men, a secure, discrimination-free workplace, and dignity.

Major Features of the Vishakha Guidelines

The Vishakha Guidelines were upheld by the Supreme Court, despite the fact that they were not explicitly stated in the Act. Until legislation is passed by Parliament, these principles will establish a comprehensive framework for the prevention and resolution of workplace sexual harassment.

- **Broad Definition of Sexual Harassment:** Sexual harassment encompasses any combination of the following: verbal or nonverbal solicitations for sexual favors, inappropriate physical contact, pornographic comments, or any combination of these. Any combination of these behaviors can constitute sexual harassment.
- **Preventive Measures:** Employers are required to implement anti-sexual harassment policies, conduct regular training and awareness campaigns, and educate their employees on the consequences of such behavior. Businesses must also increase employee awareness.
- **Complaints Committee:** A Complaints Committee must be established by all employers, which must be directed by a woman and comprise employees, outsiders, and NGO or third-party representatives. This guaranteeing the impartiality and objectivity of the investigation.
- **Fair Inquiry Procedure:** The Guidelines mandated the management of complaints in a private, standard-compliant manner, in accordance with the principles of natural justice. Additionally, they protected complainants from maltreatment and retaliation during the investigation.

3. THE SIXTEEN-YEAR INTERIM PERIOD: LIMITATIONS AND EVOLUTION (1997–2013)

Achievements of the Vishakha Guidelines

The Vishakha Guidelines were the primary workplace sexual harassment law until the 2013 POSH Act. This persisted for sixteen years. They acknowledged sexual harassment as a constitutional and legal matter, encouraged organizations to implement complaint systems, increased awareness of women's rights in the workplace, assisted civil society in resolving grievances, and provided legal remedies in the absence of statutes.

Limitations of the Guidelines

Absence of Statutory Force: The Vishakha recommendations were Supreme Court judicial advice, not Parliamentary legislation. Numerous employers neglected them due to the absence of legal penalties for failure to comply with the regulations.

Lack of Enforcement Mechanism: The Guidelines lacked a government agency or implementation date to verify compliance. Numerous workplaces implemented them in a variety of methods due to the fact that they were primarily enforced by courts.

No Penalties for Non-compliance: The Vishakha Guidelines, in contrast to subsequent legislation, did not directly penalize businesses for noncompliance. The sole alternative for non-cooperators was to pursue court contempt actions.

Limited Coverage: Informal laborers were inadequately protected by the Guidelines. Consequently, not all vulnerable workers were safeguarded in the workplace. This includes contract, domestic, and casual employees.

4. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

Enactment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act) was enacted by Parliament to address workplace sexual harassment. The Vishakha Guidelines were rendered legally binding by the Act, which acknowledged workplace sexual harassment as a violation of women's rights.

Scope of Application

The comprehensive POSH Act encompasses a wide range of organizations, including public and private entities, domestic workplaces, schools, hospitals, and government facilities. It will safeguard the majority of workplaces that contain at least one woman.

Persons Covered

The Act is applicable to all female employees, irrespective of their occupation. This law applies to contract workers, daily wage earners, apprentices, trainees, permanent and temporary employees, contract workers, and domestic workers.

Definition of Sexual Harassment

Sexual harassment is defined by the Act as unwanted physical contact, advances in sexual activity, requests for sexual favors, sexually suggestive statements, and other unwanted verbal, nonverbal, or physical actions. It encompasses both physical and non-physical harassment; consequently, it may be employed interchangeably.

Institutional Mechanisms

Internal Complaints Committee (ICC): By law, any organization with ten or more employees is required to establish an Internal Complaints Committee (ICC). In order to guarantee that complaints are addressed impartially, the Committee must include a female chairwoman, a minimum of two employees, and one external representative from a women's rights or non-governmental organization.

Local Complaints Committee (LCC): The Act enables domestic laborers, employers, and firms with ten or fewer employees to submit grievances to Local Grievances Committees (LCCs). Women are granted access to justice through this approach, which operates independently of conventional procedures.

Employer Obligations: In order to adhere to the Prolonged Occupational Safety and Health Act, employers are required to establish an Internal Complaints Committee, conduct awareness and sensitivity campaigns, organize employee training, post the company's POSH policy, and provide support to complainants during the investigation.

Penalties: Employers may be subject to penalties of up to ₹50,000 for violating the POSH Act. A company's business license or registration may be revoked or not renewed due to repeated infractions, which may result in more severe penalties. These penalties may result from the commission of multiple offenses.

5. IMPLEMENTATION GAPS AND PERSISTENT CHALLENGES

Institutional Capacity and Awareness Gaps: Institutional Capacity and Awareness Concerns: Numerous corporations establish ICCs to satisfy legal obligations, disregarding the POSH Act's original intent. Committee members frequently lack training, are unaware of their legal obligations, and are ill-equipped to conduct impartial and comprehensive investigations.

Low Employee Awareness: A significant number of employees are unaware of the provisions of the POSH Act. The Internal Complaints Committee and the complaint process are not well-known to the majority of individuals, which restricts their capacity to utilize the Act's remedies.

Underreporting of Complaints: The fear of retaliation, limited career options, and lack of faith in the systems in place to resolve such issues are the primary reasons why many workplace sexual harassment incidents go unreported. Victims are prevented from pursuing justice when their workplace culture discourages reporting.

Confidentiality Issues: Despite the fact that this is a challenging task, the POSH Act mandates that all parties to a complaint hearing maintain confidentiality. The identity of the complainant is frequently disclosed by numerous organizations, particularly those that are smaller in size. This practice can exacerbate the sense of violation experienced by victims and discourage others from filing complaints.

Weak Investigation Procedures: The effectiveness of internal complaints committees may be compromised by a lack of training, irregular procedures, inaccurate paperwork, and lower professional investigative standards. People may lose confidence in the investigation as a result of these deficiencies, which could result in inaccurate conclusions.

Challenges in the Informal Sector: The unorganized sector is safeguarded by the POSH Act; however, its implementation is inadequate. Appropriate complaint procedures are

frequently unavailable to domestic workers, contract workers, and impermanent laborers. Regrettably, local complaints committees are devoid of resources and expertise.

Inadequate Victim Support: The POSH Act prioritizes punishment and investigation, while providing victims with a restricted array of resources. Psychotherapy, financial aid, medical care, rehabilitation during investigations, and ongoing support for survivors are still insufficient.

6. CONCLUSION

In summary, India's workplace sexual harassment law has transitioned from judicial oversight to comprehensive legislative regulation. The Vishakha Guidelines (1997) recognized that workplace sexual harassment infringes upon fundamental rights and therefore implemented temporary workplace safeguards to establish a foundation for future legislation. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, aimed to formalize prevention and remedial procedures, impose obligation on employers, and broaden protection in accordance with these principles. The Act's objectives are impeded by ineffective implementation, ignorance, underreporting, institutional capability, and informal sector worker safeguards. In order to guarantee safe, dignified, and inclusive workplaces for all genders in India, it is imperative to enhance enforcement, knowledge, institutional capacity, and victim-centered support systems.

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