

**MODERN TECHNIQUES IN FORENSIC SCIENCE AND THEIR UTILITY
IN THE CRIMINAL JUSTICE SYSTEM IN INDIA.**

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ABSTRACT

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality....”²

As enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution. A safe workplace is therefore a woman’s legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women’s dignity violate the principle of equality of rights.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as ‘natural’

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² Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan

male behaviour or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business"; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large

Background

In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage.³ This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court under the banner of Vishaka. The Supreme Court for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

³ Indira Jaising, Law Relating to Sexual Harassment at the Workplace (2014)

As per the Vishaka⁴ judgment,

“Sexual Harassment includes such unwelcome 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 nonverbal conduct of sexual nature.*

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.”

Aggrieved Woman

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of

⁴ Vishaka V. State of Rajasthan AIR 1997, SC.3011

employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

Workplace

A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organised and un-organised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes:-

1. Government organizations, including Government company, corporations and cooperative societies;
2. Private sector organisations, venture, society, trust, NGO or service providers etc. Providing services which are commercial, vocational, educational, sports, professional, entertainment,
3. industrial, health related or financial activities, including production, supply, sale, distribution or service;
4. Hospitals/Nursing Homes;
5. Sports Institutes/Facilities;
6. Places visited by the employee (including while on travel) including transportation provided by employer;
7. A dwelling place or house.

The Act defines the Unorganised Sector as:

1. Any enterprise owned by an individual or self-employed workers engaged in the production or sale of goods or providing services of any kind;
2. Any enterprise which employs less than 10 workers.

Sexual Harrasment

Sexual harassment is a subjective experience and for that reason Delhi High Court held that⁵ “.....to analyze harassment from the [complainant’s] perspective. A complete understanding of the [complainant’s] view requires...an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement.... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.”

As per the POSH Act, ‘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.⁶ The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- implied or explicit promise of preferential treatment in employment;
- implied or explicit threat of detrimental treatment in employment;
- implied or explicit threat about present or future employment status;
- interference with work or creating an intimidating or offensive or hostile work environment; or
- humiliating treatment likely to affect the lady employee’s health or safety.⁷

As you would note from above, the definition of ‘sexual harassment’ under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. It includes quid pro quo sexual

⁵ Dr. Punita K. Sodhi v. Union of India & Ors

⁶ Section 2(n) of the Prevention of Workplace Sexual Harassment Act

⁷ Section 3(2) of the Prevention of Workplace Sexual Harassment Act

harassment, a form of sexual blackmail (which if translated in English, would mean ‘this for that’). In a typical situation of quid pro quo harassment, the respondent being a person in power, pressurizes the woman employee (usually a subordinate) for sexual favours in exchange for advancement in the workplace or threat of adverse employment action. The definition also includes reference to creating an ‘intimidate, offensive or hostile working environment’. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

There have been a range of cases after Vishaka judgment dealing with the issues varying from the implementation of the guidelines to various other administrative and technical aspects. For instance, in various cases post - Vishaka judgment, questions has been raised regarding the status of the inquiry held by the complaint committee. As per the Vishaka case, the report of the complaint committee should be treated as a preliminary report against accused government servant. But later on, in an order dated April 26, 2004, Supreme Court directed that “the report of the Complaints Committee shall be deemed to be an inquiry report under the (Classification Control and Appeal) Central Civil Services Rules.” Thereafter the disciplinary authority will act or the report in accordance with the rules. Sub rule (2) of rule 14 of (CCA) CCS Rules, 1965 was amended accordingly to bring this into effect. Whether an action of the superior against a female employee, which is against moral sanctions and does not withstand the test of decency and modesty, amount to sexual harassment, was the issue of contention in Apparel Export case.⁸ This was the first case where the law laid down by Vishaka was applied. This judgement also considered the question whether the allegation that the superior tried to molest a female employee at the place of work constituted an act unbecoming of good conduct and behaviour expected from the superior. These were certain questions posed to thr Court in the present case. Before the case appeared before the Supreme Court, the Enquiry Officer concluded that woman was molested by the respondent at Taj Palace Hotel on 12th August, 1988. The Disciplinary Authority agreeing with the report of the Enquiry Officer imposed the penalty of removing him from service with immediate effect on 28th June, 1989.

⁸ Apparel Export Promotion Council v. A.K. Chopra 1999 (1) SCC 759

The learned single judge of the High Court allowing the writ petition opined that “.....the petitioner tried to molest and not that the petitioner had in fact molested the complainant.”

The learned single Judge, therefore, disposed of the writ petition with a direction that the respondent be reinstated in service but that he would not be entitled to receive any back wages. The Division Bench of the High Court also while dismissing the L. P.A. filed by the appellant did not doubt the correctness of the occurrence. The Division Bench agreed with the findings recorded by the learned single Judge that the respondent had tried to molest and that he had not actually molested.

In *U.S. Verma, Principal & Delhi Public Society v. NCW & Ors*,⁹ a 2009 judgment, the main issue was whether schools followed the Vishaka guidelines suitably, in addressing the allegation of sexual harassment at the workplace, by the teacher. It was held that after consideration of whole procedure adopted by committee established by schools, Vishaka guidelines were not followed. No proper hearing was provided to teachers. Therefore, the teachers were entitled to get the compensation.

In another judgment, *Dr. Anil Seth v. Delhi Commissioner for Women*,¹⁰ power and functions of the commissioner were discussed. Court directed the Delhi Commission for women to formulate a procedure for its inquiry with 8 weeks in consonance with Vishaka Guidelines. Moving on to another issue relating to the third party obligation, in *Srinivas Rajan v. Director of Matriculation Schools office of Directorate of Matriculation Schools, DPI Complex, Chennai*,¹¹ respondent misbehaved and sexually harassed not only teachers but also parents. The Madras High Court in the present case observed that the guidelines given in the Vishaka judgment not only dealt with women employees, but also sexual harassment faced by the third party or outsiders and employer’s obligation to take action. It was held that the minutes of special enquiry committee was not in conformity with Vishaka Guidelines. Supreme Court framed these guidelines as per Article 141 of constitution and as per Article 142 all authorities were bound to implement the same. Also, in *Sunita Sharma v. Union of*

⁹ 163(2009)DLT557

¹⁰ 2010(119)DRJ87

¹¹ W.P. No. 2116 of 2011

India,¹² complaint committee of bank was held void on the basis that there is no third party representation as per the guidelines. Despite the guidelines being given in the Vishaka judgment, there was not much change in the condition and status of women at workplaces. Lack of effective implementation of Vishaka guidelines was the centre of discussion in *Medha Kotwal Lele v. Union of India*¹³ Implementation has to be not only in form but substance and spirit so as to make available a safe and a secure environment for women at their workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect.²⁶ Further directions were also issued. In this judgment, concerns were raised over the non-formation of Complaints Committee in various states as per guidelines. It was also held that an aggrieved person can approach to the High Court for non-compliance of Vishaka guidelines. Consequently, it can be observed that Supreme Court has aptly applied the law laid down in Vishaka to various judicial decisions. Vishaka judgement is rightly considered to be one of those judgments confirming the importance of judicial activism. Further, we will analyze the new legislation which has come into being recently regarding the sexual harassment at workplaces.

Conclusion

Sexual harassment has important implications for men and women and for all individuals involved in every professional/vocational stream. Reference literature provides guidance regarding the scope of protection, liabilities, and remedies for sexual harassment.¹⁴ Irrespective of the specifics of the law, all individuals desire and deserve a workplace in which they are treated with appropriate respect in a comfortable environment conducive to effective teamwork and optimal productivity. As such, leaders and employers must set the pace in affirmatively combating sexual harassment in the workplace regardless of the number of employees. Several recommendations for corporate, academic, and office-based practice settings include:

¹² Petition (Civil) No(s). 240 Of 2012

¹³ AIR 2013 SC 93

¹⁴ 28 Prater H. Overview of Law Regarding Sexual Harassment in the Workplace. Presented at: Sexual Harassment in the Workplace Seminar; American Medical Association National Leadership Conference; Los Angeles, CA;

- Educate people to avoid sexually offensive behavior.
- Establish written procedures to address sexual harassment issues and achieve problem and grievance resolution.
- Ensure that the rights of both parties are considered and both are afforded due process.

The following are additional suggestions for decreasing the incidence of sexual harassment in the workplace and educational settings:

- Encourage supervisors, physicians, and administrators to set an example by serving as positive role models.
- Investigate all complaints promptly and confidentially.
- Follow-up on all complaints.
- Sensitize employees through an interactive training process.
- Consider using an outside mediator to evaluate any complaints of sexual harassment (especially for smaller health care organizations).

India is quickly progressing in its formative objectives and an ever increasing number of ladies are joining the work power. The acknowledgment of the privilege of assurance against inappropriate behaviour is a characteristic part of the security of feminist human rights. It is throughout a stage towards giving ladies autonomy, uniformity of chance and the privilege grinding away with nobility. Inappropriate behaviour at the work environment is a social test that should be tended to. It is critical to improve the familiarity with bosses and representatives on the presence of types of lewd behaviour at the work environment, preventive measures, and legitimate system on forestalling and tending to inappropriate behaviour. Spreading of awareness and mindfulness raising exercises ought to be normally led and assessed so as to improve best practice on the best way to address lewd behavior in the work environment, and furthermore to admonish and illuminate regarding types of inappropriate behavior to empower potential exploited people to maintain a strategic distance from them. Improving instructional classes on inappropriate behavior and giving documentation or a handbook on the anticipation of lewd behavior at the work environment can help in fighting it.

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