

JOURNAL SECTION

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

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In India there was no law for the Protection of Women from Harassment at Work Place before the pronouncement of the historical verdict by the Hon'ble Supreme court in case titled **Vishaka & Ors v. State of Rajasthan AIR 1997 SC 3011**. However the Constitution contains the various provisions providing prohibition of discrimination on grounds of religion, caste, race, sex or place of birth. Such provisions are contained in Article 15 (Fundamental Rights), Article 42 (Directive Principle Of State Policy) and Article 51-A (Fundamental Duties). In addition to this even the International Conventions Instruments like **Convention On The Elimination Of The All Forms Of Discrimination Against Women** which has been ratified by Govt. of India on 25th of June 1993. There were no such laws dealing with the prevention of sexual harassment of women at work place, inspite the fact that the sexual harassment in any form has been recognized as a form of violence against women and also violates the Human Rights. Every State/Country is under obligation under International law to take effective steps to protect women from sexual violence and hold harassers or their employers accountable for sexual harassment at workplace.

An act of the sexual harassment violates many of the constitution provision contained in the constitution of India as it violates the privacy of women and therefore personal liberty of life under the Article 21 Constitution of India. Besides the Article 23 of the Constitution of India prohibits, traffic in human beings and beggars and other forms of forced labour and further provides that any contravention of this provision (Art. 23) gathered from the fact that the constitution makers that the place this article in the part third deals with the Fundamental Rights. Thus any person who is victim of human trafficking can claim that his/her Fundamental Rights are being violated. Right to life under article 21 includes the Right to live with dignity and many more similar provisions are contained in the constitution.

PRE VISHAKA LEGAL POSITION

Before the issuance of guidelines issued by the Hon'ble Supreme Court in Vishaka's case, there was no specific law on dealing with the offenders committing sexual harassment with women at work place and therefore the victim women has no specific remedy other than to file the complaint under the Section 354 of the IPC which provides for punishment for outraging the modesty of a women. Since sexual harassment is a global problem and is the

kind of violence against women and by various International Treaties, various signatory countries under take to protect women from sexual harassment of Women at workplace as the same violate their human rights. One such International covenant to which our country India is also signatory is **Convention on The Elimination Of The All Forms Of Discrimination Against Women (CEDAW)**.

POST VISHAKA'S CASE

The Hon'ble Supreme court dealing Vishaka's case which came up before the court arising out of the cause/incident of alleges brutal gang rape of social worker in the village of Rajasthan while dealing with the case. The Hon'ble Supreme court observed as under

"Each such incident results in violation of fundamental Rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of rights u/Arts. 14, 15 & 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right u/Art. 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy u/Art. 32 of the enforcement of these fundamental rights of women. This class action u/Art. 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a 'safe' working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of mechanism for its enforcement, is of the legislature and executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers u/Arts. 14, 19 & 21 are brought before us for redressal u/Art. 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum."

The Hon'ble Apex Court while dealing with Vishaka's case also observed as under:-

"17. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available u/Art. 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court u/Art. 141 of the Constitution.

The Hon'ble Supreme Court issued guidelines in Vishaka's case under Article 32 of the Constitution for enforcement of fundamental rights and made it clear that the guidelines issued in the judgment would be treated as law declared by the Supreme Court under Article 141 of the Constitution of India. The Court further observed that civil and penal laws in India since do not adequately provide for specific protection of women from Sexual harassment in work places and since enactment of legislation on the subject would take a considerable time, the Court directed that the employers in work places as well as other responsible persons or institutions must follow the guidelines laid down in the judgment ensure the prevention of Sexual harassment of women. It is the Supreme Court guidelines in Vishaka's case which continue to operate as law governing the field. However owing to effective non-implementation of the guidelines issued by the Supreme Court, petition was filed in Supreme Court by Medha Kotwal Lele and some others and the Supreme Court while deciding the aforesaid petition observed that the guidelines in Vishaka's case should not remain symbolic and India being largest democracy in the world, must combat violence against women and issue further directions until the legislative enactment on the subject is made.

PRESENT LEGISLATIVE PROVISION

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 is a legislative Act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha on September 3, 2012 and by Rajya Sabha on 26 February 2013. This Act passed to fill the vacuum as prior to that, there is no legislation on this subject and after passing of the Vishaka's case judgment, the guidelines issued by the Supreme Court governs the field.

In order to provide more rights under law to the working women, the Act specifically provides that the provision contained in the Act shall be in the addition to any other law applicable for time being enforce meaning thereby that all other rights and remedies provided in other laws remains available with the working women. The Act provides mechanism for redressal of complaint of sexual harassment and for the matters connected therewith or incidental there to. The Act has adopted the definition of sexual harassment as defined by the Hon'ble Supreme Court in Vishakha's case which reads as under:

Section 2 (n): "Sexual Harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- (i) Physical contact and advances; or

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

To deal with the complaints of sexual harassment, the Act provides for constitution of Internal committee and the local committee and the Act defines workplace which also includes private sector organization, private undertaking, hospitals or nursing home, societies and non organization commercials, professional and other institutions an sports institutes, stadium and many more.

The definition of the workplace is inclusive and non exhaustive. The Act provides that aggrieved women can make complaint of sexual harassment at workplace to the Internal Complaints Committee or to the Local Complaints Committee within a period of three months from the last incident. The Act further provides that if due to physical incapacity any aggrieved woman is unable to make a complaint, then the complaint may be filed by her relative, co-worker or friends or officer at the National Commission for Women or State Women Commission or any person who has knowledge of the incident.

Section 12 of the Act provides that during the pendency of the inquiry, the committee may recommend the employer to transfer the aggrieved women or the respondent to any other workplace or grant leave to the aggrieved women upto three months and the leave granted under this section to the aggrieved women shall be in addition to the leave she would otherwise entitled to. It is further provided that recommendations under section 12(1) is made by committee, the employer is bound to implement the recommendation to the committee and shall sent implementation report to the concerned committee in case that the section 13 provides that if the allegations made by the aggrieved women has been proved the respondent shall be liable for the misconduct in accordance with the provision of the service rule and the Act also provided for the deduction from the salary/wages of the respondent as penalty and in the case of being absent or cessation of the duty if the respondent is not getting salary and fails to pay the sum of penalty, the same shall be recoverable as arrears of land revenue. Section 14 of this Act provides for action against false/malicious complaint as well as false evidence in order to maintain privacy, section 16 of the Act provides that the identity and the address of the aggrieved women, respondent and witnesses shall not be disclosed as published and even shall not be made known to public under right to information and the breach of the provision provided for the penalty under existing service rule. In order to

create awareness, the Act provides that employers are duty bound to display at any conspicuous place in the workshop the penal consequences of the sexual harassment and order constituting external committee, besides providing various other activities like organizing workshop awareness programmes. The section 26 of the Act provides penalty for the non compliance of the provisions of this Act and the same is punishable with fine which may extended to fifty thousand rupees and if after first conviction for employer is found guilty for the same offence again the punishment shall be twice of the punishment which might have been imposed on first conviction and also be lead to the cancellation, withdraw non renewable of his/her license to carry on his business. In order to effectively implementation of the provisions of the Act the govt. has also framed rules known as Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

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